HOME RULE ACT AMENDMENTS

HEARINGS 96-1

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT AFFAIRS AND BUDGET

AND THE

COMMITTEE ON THE DISTRICT OF COLUMBIA HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

H.R. 5927—CONDITIONS FOR COUNCIL EMERGENCY ACTS
H.R. 5928—ELIMINATE CONGRESSIONAL REVIEW PERIOD ON COUNCIL ACTS
H.R. 6147—REDUCE CONGRESSIONAL REVIEW PERIOD AND REPEAL COUNCIL'S AUTHORITY RE EMERGENCY ACTS

DECEMBER 5, 1979, AND JUNE 11, 1980

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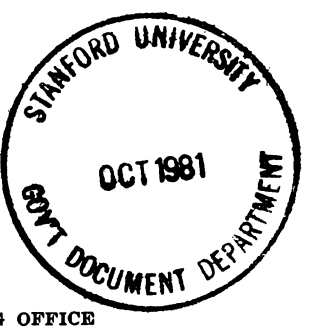

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CONTENTS

HEARINGS

STATEMENTS

MATERIAL SUBMITTED FOR THE RECORD

SUMMARY OF TESTIMONY

APPENDIXES

AMEND HOME RULE ACT—COUNCIL EMERGENCY ACTS H.R. 5927, H.R. 5928 AND H.R. 6147

WEDNESDAY, DECEMBER 5, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT AFFAIRS AND BUDGET,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:45 a.m., in room 1310, Longworth House Office Building, Hon. Walter E. Fauntroy (chairman of the subcommittee) presiding.

Members present: Delegate Fauntroy and Representative McKinney.

Also present: Stephen A. Horblitt, subcommittee staff assistant; Elizabeth D. Lunsford, committee general counsel; James T. Clark, legislative counsel; Dale MacIver, counsel; Harry M. Singleton, minority chief counsel; Karen Ramos-Bates, minority staff assistant; and Howard Lee, legislative counsel to Mr. Fauntroy.

Mr. FAUNTROY. The Subcommittee on Government Affairs and Budget will come to order.

Today, we begin hearings on H.R. 5927, a bill to set out the conditions under which the Council of the District of Columbia may enact emergency acts, and for other purposes, and also H.R. 5928, a bill to amend the District of Columbia Self-Government and Governmental Reorganization Act to eliminate the congressional review period for acts of the Council of the District other than acts relating to crimes, criminal procedure, and prisoners, and acts proposing amendments to title IV of such act.

[Copies of H.R. 5927 and H.R. 5928, introduced by Messrs. Fauntroy, Dellums, and McKinney on November 16, 1979, together with staff memorandum, follow:]

[H.R. 5927, 96th Cong., 1st sess.]

A BILL To set out the conditions under which the Council of the District of Columbia may enact emergency acts, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That section 412(a) of the District of Columbia Self-Government and Governmental Reorganization Act is amended (1) by designating the existing text as paragraph (1); (2) by deleting "ninety days" and inserting in lieu thereof "one hundred and eighty days"; and (3) by adding at the end thereof the following new paragraph:

"(2) In no case shall any emergency act be passed by the Council arising out of or in connection with any emergency situation if such act is for the same purpose and covers, in whole or in part, the same subject matter as any prior emergency act and is based on the same emergency as that on which such prior

act was based. The provisions of this paragraph shall not be applicable with respect to any emergency act of Council amending an emergency act in effect on the date of the enactment of this paragraph in order to extend the effective date of such act in compliance with subsection (d) of this section.".

(b) Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act is amended by adding at the end thereof the following new subsection:

"(d) Except as provided in this subsection, in any case in which an act is passed pursuant to subsection (a)(1) of this section on the basis of an emergency, including any act so passed by the Council and still in effect on the date of the enactment of this subsection, such emergency act, including all amendments thereto, shall terminate on the date of termination provided in such act, or upon the expiration of the one-hundred-and-eighty-day period following the date of enactment of such emergency act, whichever first occurs. In any case in which the Council, during such one-hundred-and-eighty-day period. passes and transmits to the Speaker of the House of Representatives and the President of the Senate an act under the regular order for the same purpose, and covering and limited to the same subject matter, as that contained in such emergency act, and the Congress adjourns sine die prior to the termination of the thirty-day period provided in section 602(c) of this Act for the consideration by Congress of such act of Council, the emergency act of Council shall remain effective until after the expiration of such thirty-day period, unless a disapproving resolution is passed in accordance with section 602(c) (1) or (2).

[H.R. 5928, 96th Cong., 1st sess.]

A BILL To amend the District of Columbia Self Government and Governmental Reorganization Act to eliminate the congressional review period for acts of the Council of the District other than acts relating to crimes, criminal procedure, and prisoners and acts proposing amendments to title IV of such Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by striking out the second and third sentences thereof and inserting in lieu thereof the following: "Except as provided in paragraph (2), no such act shall take effect until the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate.".

SEC. 2. (a) The amendment made by the first section of this Act shall apply with respect to acts of the Council of the District of Columbia transmitted to the Speaker of the House of Representatives and President of the Senate on or after the date of the enactment of this Act.

(b) Any act of the Council of the District of Columbia transmitted to the Speaker of the House of Representatives and President of the Senate before the date of the enactment of this Act which has not become law or been disapproved by the Congress as of such date shall take effect on the date of the enactment of this Act.

STAFF SECTION-BY-SECTION ANALYSIS AND BACKGROUND

BACKGROUND

On October 19, 1979, the Superior Court of the District of Columbia handed down its decision in the *Washington Home Ownership Council* v. *District of Columbia, et al,* (Civil Action No. 10624–79). This case involved an application for a declaratory judgment that certain emergency acts of the District of Columbia City Council relating to the sale, acquisition, and development of real estate for cooperative or condominum ownership in the District were unlawfully enacted. Specifically, the Court was asked to rule whether the District of Columbia Self-Government and Governmental Reorganization Act—The Home Rule Act—permits the Council to enact successive or similar emergency legislation. In reaching its decision, the Court noted that:

"When the legislative history of the Home Rule Act and the 1978 Amendments reto is considered, the only natural and logical conclusion that can be reached s that the Congress did not confer upon the Council the power to enact "emer-

gency" legislation of indefinite duration through repeated use of emergency power."

The Superior Court then held:

". . . that the successive enactment of substantially the same substantive provisions of law through the emergency power, maintaining such provisions in effect for more than 90 days without a second reading or submission for Congressional review is, with respect to the statutes at issue before the court, unlawful."

This ruling had an immediate and dramatic effect upon the mortgage lending industry in the District of Columbia. The ruling was followed by a decision by the Federal National Mortgage Association that it would no longer buy home mortgages on property in the District of Columbia. The Federal Home Loan Mortgage Corporation, private participants in the secondary mortgage market, and other residential mortgage lenders, took similar action.

The basis for these decisions was that the ruling of the Superior Court called into question the validity of the Interest Rate Modification Second Emergency Act of 1979 (EA 3–79). Although, this piece of emergency legislation was not before the Council in the case of the *Washington Home Ownership Council* v. *District of Columbia, et al.*, the basic legal principle still applied and the legality of EA 3–79 was called into question. EA 3–79 was emergency legislation enacted on October 5, 1979, that raised the usury limitation on residential mortgage from 11 percent to 15 percent.

In response to this uncertainty which precipitated a mortgage lending crisis in the District of Columbia, the Council adopted permanent legislation to lift the usury ceiling to 15 percent. However, that legislation, the Interest Rate Modification Act of 1979 (District of Columbia Act 3–119), would not have taken effect for 30 legislative days from the date the Act was transmitted to the Speaker of the House and the President of the Senate, a Congressional layover period set in the Home Rule Act (Public Law 93–198) Sec. 602 (c) (1), D.C. Code, title 1, Sec. 147 (c) (1).

In response to this crisis, and the need to remove the uncertainty in the mortgage lending industry, the Congress considered and approved, and the President signed into law on November 20, 1979, H.R. 5811 H.R. 5811 waived for this Act only (3–119) the required Congressional Review period for legislation passed by the District of Columbia City Council and thus permitted the Interest Rate Modification Act of 1979 (Act No. 3–119), which was permanent legislation to take effect upon signature by the President.

This action removed the uncertainty which had plagued lenders, real estate agents, home builders, and home buyers and sellers.

H.R. 5811 dealt effectively with the crisis described above. There continues to be uncertainty concerning the successive enactment of other emergency legislation and there will continue to be the potential for ensuing difficulties which may result from a failure to clarify the capacity of the City Council of the District of Columbia to enact successive emergency acts.

There are several methods to remedy the problem. One remedy would be specifically to clarify the conditions under which the District of Columbia City Council may enact emergency legislation. Another alternative—which is broader in its reach—would be to substantially eliminate the Congressional layover period. A third alternative action would be measures somewhere between the previous two alternatives.

H.R. 5927, a bill to set out the conditions under which the Council of the District of Columbia may enact emergency acts, and for other purposes and H.R. 5928, a bill to amend the District of Columbia Self-Government and Governmental Reorganization Act to eliminate the Congressional review period for acts of the Council of the District, other than acts relating to crimes, criminal procedure, and prisoners and acts proposing amendments to Title IV of such Act, have been introduced as a result of, and in response to, the recent crisis on mortgage funds precipitated by questions concerning the use of emergency legislative power by the District of Columbia Government.

Summary of H.R. 5927, Emergency Acts of the Council

H.R. 5927 makes the following changes in Sec. 412 of the Home Rule Act.

Page 1—Emergency acts adopted by the Council will be in effect up to 180 days rather than 90 days.

Page 2—A new paragraph (2) in Subsection 412(a) provides that hereafter when the Council has adopted an emegency act it cannot adopt a second emer-

gency act based on the same emergency and for the same purpose and subject matter as the first emergency act.

A new subsection (d) is added to Section 412, to do two things: First, an emergency act expires 180 days after enactment or sooner if provided in the emergency act. This applies to any Council Act which when H.R. 5927 becomes law has not been in effect for the 90 days presently allowed by Sec. 412.

Second, if the Council has passed permanent legislation to extend beyond the life of an emergency act but Congress adjourns sine die before the permanent legislation has taken effect, the emergency act will continue in effect beyond its normal 180 day life and until the permanent legislation takes effect or is vetoed by Congress.

Summary of H.R. 5928, Eliminating the 30 Day Congressional Review Period for Most Council Acts

H.R. 5928 strikes 2nd & 3rd sentences of Sec. 602(c)(1) of the Home Rule Act. The deleted sentences delay the effective date of most Council Acts for 30 legislative days, allow Congress to veto Council Acts by adopting a concurrent resolution, and refer to special floor procedures in Sec. 604.

A new sentence delays the effective date of Council Acts until copies are transmitted to the House and Senate.

Sec. 2(a) & (b) of H.R. 5928 makes effective immediately any Council Act which has already been transmitted to Congress before the day H.R. 5928 becomes law.

EXCERPTS FROM HOME RULE ACT, AS AMENDED . . . "THE DISTRICT OF COLUMBIA SELF-GOVERNMENT AND GOVERNMENTAL REORGANIZATION ACT OF 1973 (P.L. 93-198)

SEC. 412. (a) The Council, to discharge the powers and duties imposed herein, shall pass acts and adopt resolutions, upon a vote of a majority of the members of the Council present and voting, unless otherwise provided in this Act or by the Council. The Council shall use acts for all legislative purposes. Each proposed act (other than an act to which section 446 applies)[7] shall be read twice in substantially the same form, with at least thirteen days intervening between each reading. Upon final adoption by the Council each act shall be made immediately available to the public in a manner which the Council shall determine. If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days. Resolutions shall be used to express simple determinations, decisions, or directions of the Council of a special or temporary character.

(b) A special election may be called by resolution of the Council to present for an advisory referendum vote of the people any proposition upon which the Council desires to take action.

(c) A majority of the Council shall constitute a quorum for the lawful convening of any meeting and for the transaction of business of the Council, except a lesser number may hold hearings.

* * * * * * *

Sec. 602. (c)(1) Except acts of the Council which are submitted to the President in accordance with the Budget and Accounting Act, 1921, any act which the Council determines according to section 412(a), should take effect immediately because of emergency circumstances, and acts proposing amendments to title IV of this Act, the Chairman of the Council shall transmit to the Speaker of the House of Representatives and the President of the Senate a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and repassed by two-thirds of the Council present and voting, each act passed by the Council and allowed to become effective by the Mayor without his signature, and each initiated act and act subject to referendum which has been ratified by a majority of the registered qualified electors voting on the initiative or referendum.[n]

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[7] The language in parentheses was added to Section 412(a) by Section 1(4) of Public Law 95-926.

[n] Section 1(2)(A) of Public Law 95-526 amended the first sentence of Section 602(c)(1), by striking out the parenthetical clause (and with respect to which the President has not sustained the Mayor's veto); by substituting "each" for "and every"; and by adding a new clause, at the end of the sentence, as to initiated acts and acts subject to referendum.

Except as provided in paragraph (2), no such act shall take effect until the end of the 30-day period (excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act.[23] The provisions of section 604, except subsections (d), (e), and (f) of such section, shall apply with respect to any concurrent resolution disapproving any act pursuant to this paragraph.

(2) In the case of any such act transmitted by the Chairman with respect to any Act codified in titles 22, 23, or 24 of the District of Columbia Code, such act shall take effect at the end of the 30-day period beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate only if during such 30-day period one House of Congress does no adopt a resolution disapproving such act. The provisions of section 604, relating to an expedited procedure for consideration of resolutions, shall apply to a simple resolution disapproving such act as specified in this paragraph.

* * * * * * *

CONGRESSIONAL ACTION ON CERTAIN DISTRICT MATTERS

SEC. 604. (a) This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such these provisions are deemed a part of the rule of each House respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by this section; and they supercede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rule (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) For the purpose of this section, "resolution" means only a concurrent resolution, the matter after the resolving clause of which is as follows: "That the ———— approves/disapproves of the action of the District of Columbia Council described as follows: ————.", the blank spaces therein being appropriately filled, and either approval or disapproval being appropriately indicated; but does not include a resolution which specifies more than one action.

(c) A resolution with respect to Council action shall be referred to the Committee on the District of Columbia of the House of Representatives, or the Committee on the District of Columbia of the Senate, by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(d) If the committee to which a resolution has been referred has not reported it at the end of twenty calendar days after its introduction, it is in order to move to discharge the committee from further consideration of any other resolution with respect to the same Council action which has been referred to the committee.

(e) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(f) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same action.

(g) When the committee has reported, or has been discharged from further consideration of, a resolution, it is at any time thereafter in order (even though

[23] Section 1(2)(B) of Public Law 95–526 amended the 2nd sentence of Section 602(c)(1), struck out "either House is not in session", and inserted in lieu thereof "neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days".

a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(h) Debate on the resolution shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(i) Motions to postpone made with respect to the discharge from committee or the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(j) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

DISTRICT COUNCIL ACT 3–119

(Transmitted to the Speaker for Congressional Review)

* * * * * * *

D.C. Act 3–119—Interest Rate Modification Act of 1979—to amend Section 2 of the D.C. Code (Tit. 20, Sec. 3301 eta.) to raise the interest rate to 15 percent on residential mortgage loans and certain consumer loans. This would apply to (1) 1st mortgage and 1st deeds of trust on residential property, with present ceiling of 11 percent; (2) all other mortgage loans and deeds of trust on residential property, with present ceiling of 11½ percent; (3) residential cooperative loans, with present ceiling of 12 percent; (4) demand loans, bridge loans, with installment loans over $25,000, commercial loans of $5,000 or less, and non-installment non-commercial loans, with present ceiling of 8 percent; and (5) installment loans up to $25,000 on Federally-insured bank or savings and loan with present ceiling of 11.5 percent. The act also repeals Regulation 74–21, "Establishing Interest Rates for Certain Loans" enacted August 1, 1974.

Adopted by the Council Nov. 6 1979.

Signed by the Mayor on Nov. 6, 1979.

November 6, 1979. Received by Speaker.

November 6. 1979. Received by Committee.

(*Note.*—For Council Emergency Acts adopted 1975–1980, see Appendix D.)

STAFF TABULATION

Issues	Present D.C. Code	Council rules	Pre-1975 Council (old 1–1505, (a), (c)	Rivercomb decision	D.C. Appeal argument	Other states	Other cities	Eagleton bill, H.R. 5927	Fauntroy bill, H.R. 5928	Remarks
Effective date of usual acts	30-day layover and published in D.C. Regulations.	Published in D.C. Regulations	30 days after notice, except for good cause (and Mayor sign).	----------	----------	90 days after adjournment	----------	----------	Day transmitted to Congress.	
Effective date of emergency acts	Mayor signs (etc.)	----do----	Mayor sign (etc.)	----------	----------	Signed by Governor	----------	----------	----do----	
Definition of "emergency"	"Emergency circumstances make it necessary."	"In an emergency as determined by the Council."	"Immediate preservation of the public peace, health, safety, welfare or morals."	"Unforseen occurrence or cond'n calling for immediate action to preserve the public peace, health, safety, welfare or morals * * * in times of exigency, crisis, difficulty or danger."	"Threat to public safety, comfort or welfare necessitating imm. action * * *."	Some use "urgency"	----------	----------	----------	
How long is emergency act in effect?	90 days	----------	120 days	90 days—no reenactment	90 days and repeat if "exists over an extended period of time."	----------	----------	180 days	----------	
What does emergency procedure waive?	2nd reading; 30 day layover in Cong.	----------	Notice and public	----------	----------	Some just 2nd reading; some delayed effectiveness	----------	----------	----------	

Mr. FAUNTROY. These bills have been introduced, of course, as a result, and in response to the recent crisis on mortgage funds precipitated by questions concerning the use of emergency legislative power by the Council of the District of Columbia. (For listing of Council's Emergency Acts (adopted 1975–1980), see Appendix C hereof.)

Our purpose in these hearings is to receive testimony on these two bills and to examine present legislative processes in order to structure new and more efficient procedures.

Additionally, it is important to establish a hearing record which illustrates our experience with existing procedures and events that led to the recent mortgage crisis.

An examination of the congressional layover time for District of Columbia City Council acts indicates that the layover time becomes an acute problem during periods of congressional recess.

For example, in 1979 City Council acts 3–55 through 3–81 had a congressional layover period of between 65 and 78 days. All these acts were received by the Speaker of the House during the summer months of June, July, and August, and the 30-day layover period required was stretched out because of the congressional recess periods.

It is this problem—among others—that this hearing is designed to address.

We are more than privileged to welcome our first witness today, my good friend and colleague, and proven champion of the right of the District of Columbia residents to self-determination, the distinguished ranking minority member of the Committee on the District of Columbia, Congressman Stewart B. McKinney.

Congressman McKinney, it is a pleasure to have you, and we look forward eagerly to your testimony at this point.

STATEMENT OF HON. STEWART B. McKINNEY

Mr. MCKINNEY. Thank you, Mr. Chairman.

Mr. Chairman, and members of the Subcommittee on Government Affairs and Budget, I am delighted to have the opportunity to appear before you today and to share with you my thoughts on these two important pieces of legislation, H.R. 5927 and H.R. 5928.

H.R. 5927 would establish a new period of 180 days during which emergency legislation passed by the city would remain in effect. Further, under this bill, the city government would be limited to one emergency enactment of 180 days in length dealing with a similar subject.

H.R. 5928 would simply eliminate the congressional review period for acts passed by the city government with the exception of acts relating to crimes, criminal procedure, prisoners, and acts relating to Title IV of the Home Rule Act.

Although I have supported each of these bills through my cosponsorship, I now have some second thoughts about them. Whereas I still believe in the spirit of these bills, upon further reflection I feel that there is a better way to achieve the stated goals.

H.R. 5927

H.R. 5927 would establish a more strict timetable for the imposi- of emergency legislation. I agree that something needs to be done

to limit the number and the succession of emergency legislation passed by the Council, and H.R. 5927 is certainly a step in that direction. As I stated at the full committee meeting during the recent crisis regarding the usury rate in the District of Columbia, if the matter is worth legislating, then it ought to be done as permanent legislation—the citizens of the District of Columbia deserve no less.

Thus far this legislation session, 69 percent of all Council acts have been of an emergency nature. In light of this record, I believe the question we should be asking ourselves is why is the city enacting so much emergency legislation. Does it have something to do with the time it takes under the congressional review process to enact matters into law? In any event, I do not believe that H.R. 5927 goes far enough to solve the problem.

H.R. 5928

I have had similar thoughts regarding H.R. 5928. There is no one who is a bigger advocate of getting the Congress out of city affairs than I am, and H.R. 5928 would be a tremendous step down that road. However, upon retrospection, I am concerned about the practicality of the bill.

On the one hand, the bill completely eliminates congressional review over all matters with the exception of matters relating to crimes, criminal procedure, treatment of prisoners, and Title IV of the Home Rule Act.

FEDERAL INTEREST

What happens when there is a matter which the city has legislated that involves a clear Federal interest? There is no efficient procedure for Congress to follow if it does not like that act. It would appear that in that event Congress would have to enact a law superseding the city law making for a very inefficient and cumbersome process. We must face the fact that this is the Nation's Capital and that there are going to be areas involving the Federal interest upon which the city is likely to legislate. We must take this into account as well as the storm of protest, if events of recent days are to be instructive, that is likely to come on the floor of the House if this bill is reported out by the full committee.

The other problem with the bill, it seems, is the dual system it sets up. Matters relating to crimes, criminal procedure and the like would still be under the old rules while everything else would escape the congressional review process. I do not understand why we would want to establish a two-tiered system such as this when the thought is to simplify the process and to remove Congress from meddling in strictly local affairs.

AMENDMENTS PROPOSED BY H.R. 6147

After a long and hard period of retrospection, I believe that I have come up with a solution to the problem which I intend to introduce in the form of a bill in the near future, which will combine certain features of both bills.

[The bill was subsequently introduced on December 14, 1979, by Mr. McKinney, and Mrs. Fenwick as H.R. 6147, as follows:]

H.R. 6147, 96th Congress, 1st Session

A BILL To amend the District of Columbia Self-Government and Governmental Reorganization Act to reduce from thirty to seven legislative days the period for congressional review of acts of the Council of the District of Columbia which do not involve a Federal interest, to allow such acts to take effect during a congressional recess or adjournment, to repeal the authority of the Council of the District of Columbia to enact temporary emergency legislation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act (hereinafter in this Act referred to as the "Self-Government Act") is amended to read as follows:

"(c)(1) Except acts of the Council which are submitted to the President in accordance with the Budget and Accounting Act, 1921, and acts proposing amendments to title IV of this Act, the Chairman of the Council shall transmit to the Speaker of the House of Representatives and the President of the Senate a copy of each act passed by the Council and signed by the Mayor or vetoed by the Mayor and repassed by two-thirds of the Council present and voting, each act passed by the Council and allowed to become effective by the Mayor without his signature, and each initiated act and act subject to referendum which has been ratified by a majority of the registered qualified electors voting on the initiative or referendum. Each such act shall be referred by the Speaker of the House of Representatives to the Committee on the District of Columbia of the House of Representatives and by the President of the Senate to the Committee on Governmental Affairs of the Senate and shall take effect only in accordance with paragraph (2).

"(2)(A)(i) Except as otherwise provided in subparagraphs (B) and (C), each act transmitted by the Chairman pursuant to paragraph (1) shall take effect at the end of the 7-day period (determined in accordance with paragraph (3)) beginning on the day such act was transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate unless before the end of such 7-day period both the Committee on the District of Columbia of the House of Representatives and the Committee on Governmental Affairs of the Senate find that such act involves a Federal interest.

"(ii) The Committee on the District of Columbia of the House of Representatives shall promptly hold a hearing for the purpose of receiving testimony concerning whether such act involves a Federal interest upon the request of any Member of the House of Representatives (including any Delegate to the Congress and the Resident Commissioner of Puerto Rico) for such a hearing. The Committee on Governmental Affairs of the Senate (or the appropriate subcommittee thereof) shall promptly hold a hearing for the purpose of receiving testimony concerning whether such act involves a Federal interest upon the request of any Senator for such a hearing.

"(iii) If both committees make such a finding under clause (i) within the 7-day period prescribed in such clause, then such act shall not take effect until the end of the 30-day period (determined in accordance with paragraph (3)) beginning on the day such act was transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate and shall take effect then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act. The provisions of section 604, except subsections (d), (e), and (f) of such section, shall apply with respect to any concurrent resolution disapproving an act of the Council pursuant to this subparagraph.

"(B) In the case of an act transmitted by the Chairman pursuant to paragraph (1) which was passed by the Council under the authority of the fourth sentence of section 412(a) and in which the Council declares that emergency circumstances exist, such act shall take effect immediately upon a finding by either committee referred to in subparagraph (A), if made before the end of the 7-day period prescribed in such subparagraph, that such act does not involve a Federal interest.

"(C)(i) In the case of an act transmitted by the Chairman pursuant to paragraph (1) which is transmitted during a period when neither House of Congress is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days, such act shall take effect on the day transmitted, but shall be subject to the provisions of subparagraph (A) (including the provisions providing for the disapproval of such act) beginning on the day on which Congress reconvenes.

"(ii) In the case of an act transmitted by the Chairman pursuant to paragraph (1) which has not taken effect pursuant to subparagraph (A) or (B) or been disapproved pursuant to subparagraph (A) when Congress adjourn sine die or begins a recess or adjournment of more than 3 days, such act shall take effect immediately upon such adjournment or recess, but shall be subject to the completion of the review prescribed by subparagraph (A) (including the disapproval of such act authorized by such subparagraph) upon the reconvening of Congress.

"(3) In computing any 7-day period or any 30-day period for the purposes of paragraph (2), there shall be excluded Saturdays, Sundays, and holidays and days on which neither House of Congress is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days.".

SEC. 2. The fourth sentence of section 412(a) of the Self-Government Act is amended to read as follows: "If the Council determines, by a vote of two-thirds of the members present and voting, that emergency circumstances make it necessary that an act be passed after a single reading and the Council declares in such act that such emergency circumstances exist and states in such act the nature of the emergency circumstances, such act may be presented to the Mayor under setion 404(e) after a single reading.".

SEC. 3. (a) Subsection (b) of section 604 of the Self-Government Act is amended by striking out "District of Columbia Council" and inserting in lieu thereof "Council of the District of Columbia".

(b) Subsection (c) of such section is amended by striking out "Committee on the District of Columbia of the Senate" and inserting in lieu thereof "Committee on Governmental Affairs of the Senate".

SEC. 4. The amendment made by the first section of this Act shall apply with respect to acts of the Council of the District of Columbia transmitted to the Speaker of the House of Representatives and President of the Senate on or after the date of the enactment of this Act.

Mr. MCKINNEY. Under my proposal, acts passed by the local government would be submitted to the Clerk of the House and the President of the Senate in the usual way. They would be referred to the representative committees in the House and Senate responsible for District of Columbia affairs. The House Committee on the District of Columbia and its Senate counterpart would then have 7 working days to determine if the city act involves a Federal interest. If neither committee, or only one committee, finds a Federal interest involved, the act goes into effect at the end of the 7-day period. If both committees find a Federal interest, then the old 30-calendar-day review period is reinstituted and only at that point can a resolution of disapproval be entertained.

Under my proposal, the City Council would not have the authority to enact emergency legislation. Upon a declaration of the existence of an emergency, by a two-thirds vote of the Council, the Council upon one reading can pass and send to the Mayor permanent legislation for enactment. Assuming the Mayor acts favorably, the act would then be submitted to Congress. If one or both committees responsible for District of Columbia affairs makes an affirmative finding within 7 days that the act does not involve a Federal interest, the act would immediately become law.

Should Congress be out of session upon the transmittal of a city act to the Clerk of the House and to the President of the Senate, or go into recess during the consideration of such an act, the act will go into effect and remain in effect as law until Congress reconvenes and finishes the review process.

Mr. Chairman and members of the subcommittee, I believe my proposal is more practical and workable. On the one hand, we preserve

64-864 O - 80 - 2

the machinery by which Congress, acting out of concern for legitimate Federal interests, can interject itself into the legislative process of the city in a fairly efficient and manageable way.

On the other hand, we ease the cumbersome congressional review period by shortening it to 7 working days and perhaps even shorter for emergency situations. In this way, the long waits and unpredictability as to when city acts would become law is eased tremendously, if not eliminated in many instances.

In closing, I would only ask you, Mr. Chairman, and my colleagues to delay markup of the bills presently before the subcommittee until you have had an opportunity to consider and take testimony on this alternative proposal.

Thank you.

Mr. FAUNTROY. Thank you, Mr. McKinney. Your thoughts, as usual, are most valuable and reasonable. I understand your discussion draft is the specific measure on which you would have us hold hearings and consider before any markup?

PROBLEMS INVOLVED

Mr. MCKINNEY. That is right, Mr. Chairman. I find myself as you and I have often found ourselves, in a terrible quandary. I don't feel that what I would really like, which is for this committee to just dissolve and disappear, is going to happen. I see that there are some Federal interests. I am sure the chairman is well aware that the State Department is scurrying madly up and down the halls of Congress about the recently passed city legislation concerning the location of the chanceries of various embassies. There has been some concern expressed by one of our colleagues, an important member of this committee, about certain changes in the height of various buildings close to the U.S. Treasury. Finally, there has also been a certain concern about the Georgetown waterfront.

I, myself, Mr. Chairman, don't feel that these issues necessarily involve a Federal interest, but there are many of our colleagues who usually support you—and I fully—who distinctly feel otherwise.

What I have tried to do is come up with some method by which the City Council and the people of the District of Columbia will know whether or not they have a piece of legislation.

To cover the emergency legislation situation, I think that two-thirds of the City Council certainly would react to an emergency. The one reading would greatly shorten the process. Assuming the Mayor's signature was readily obtained, the new system would allow the city to react almost instantaneously in any situation and not have the problem of delay.

Mr. FAUNTROY. Again, I reiterate that we certainly appreciate the gentleman's contribution. As you know, in the measure which is before us, there is, in effect, a 13-day period during which the Congress may consider legislation which the Council expects to pass. I wonder whether we could use that 13-day period between the first and second readings of a measure which the Council intends to pass, and whether or not the 7-day period which you contemplate in your legislation might begin following the first reading of a measure.

Mr. McKINNEY. Well, I think essentially what I am trying to do is to remove Congress from almost every decision the City Council makes, and all I really want the 7 days for is to have a determination that there is no Federal interest. Should there be a finding of a Federal interest, then, of course, the whole process we have now would go into effect.

It seems to me there should be a simple way to turn around and say that the Council's act is not of any concern to Congress rather than, quite frankly, having us go to the floor with what I would like, as I say, the dissolution of our total interest, and being run over by a steamroller.

Mr. FAUNTROY. Would you contemplate the situation in which the Mayor would be required to sign a transmittal at all times; that is, particularly in emergency situations?

Mr. McKINNEY. Well, under my bill, upon a single reading, the City Council would send it to the Mayor and the Mayor would then have to pass it up the hill, and then only one committee would have to find there was no Federal interest and immediately the District would have a permanent law. For instance, this committee could meet immediately and state we see no Federal interest and the emergency legislation would become the law of the District.

Mr. FAUNTROY. You share my concern that legislation passed by the Council should become effective as soon as possible. I would again pose the question of whether the 13-day period between the first and second reading might be utilized for review purposes in some way. Do you think that could be made acceptable to our colleagues?

Mr. McKINNEY. The problem with any delay period that I ran into, and I am sure you have seen this, is Congress rather sporadic schedule, which is why I clearly state the law will become a law should we not be here or should we go away somewhere. Say the law came up and we only had 2 days before a recess, and didn't do anything, the law would become the law of the city and then we would only have 5 days after we came back to finish the review. We would have 5 days to say there is no Federal interest in the law; so the chances are in a majority of cases that the city's business would not be disrupted, which I think is important.

What I am trying to do is make sure there can be no such resolution unless these committees have said there is a Federal interest, and I think, Mr. Chairman, we have a far better chance for the city because I would defy many of my colleagues to find any real Federal interest in most of the legislation that the District passes, be it condominium conversion or what-have-you. There obviously is no Federal interest in that as far as this Member is concerned. I would love to argue the case, and I know I would win, that there was no Federal interest.

Mr. FAUNTROY. The gentleman's thoughts are worthy of serious consideration. I can assure him there will be no markup by this subcommittee until such time as we have reviewed in some detail your suggestions.

Mr. McKINNEY. Thank you, Mr. Chairman.

Mr. FAUNTROY. Are there questions which counsel would like to tender?

Mr. MACIVER. No, Mr. Chairman.

Mr. McKINNEY. I am always afraid of dealing with these brilliant lawyers.

Mr. FAUNTROY. Thank you Mr. McKinney. I hope you will join us as we receive other testimony. The committee will momentarily suspend until the next witness is ready to testify.

[Short recess taken.]

Mr. FAUNTROY. The first quorum call has been answered, and we will resume our hearings. I welcome the witness at this time, the distinguished Mayor of the District of Columbia, Hon. Marion S. Barry, Jr., who will give us a picture of the present situation facing the city in terms of our legislative process, while suggesting some methods for improving the legislative process as it relates to emergency legislation and congressional review.

We welcome Mayor Barry, and also with him, the Corporation Counsel for the District, Mrs. Judith Rogers. We are pleased to have you to come before our committee.

STATEMENT OF HON. MARION S. BARRY, MAYOR OF THE DISTRICT OF COLUMBIA, ACCOMPANIED BY MS. JUDITH ROGERS, CORPORATION COUNSEL, AND MS. BARBARA WASHINGTON, ASSISTANT ADMINISTRATOR FOR INTERGOVERNMENTAL AFFAIRS

Mayor BARRY. Thank you very much. I would like to indicate my extreme pleasure and delight in being asked to testify on H.R. 5928, which is the legislative autonomy bill, and H.R. 5927, the emergency legislative powers.

With me, Mr. Chairman, for the record, is Mrs. Judith Rogers, Corporation Counsel for the District of Columbia, and also Ms. Barbara Washington, who is assistant administrator for intergovernmental affairs. As you know, Ms. Washington formerly worked for Mr. McKinney on the committee, and she has been helpful in helping us understand how things work up here, and it is your loss and the city's gain and we appreciate that.

I would like to ask that my entire statement be entered into the record, and I will just summarize part of it.

Mr. FAUNTROY. Without objection, it is so ordered.

Mayor BARRY. Thank you very much.

[The Mayor's prepared statement follows:]

STATEMENT OF MARION S. BARRY, JR., MAYOR OF THE DISTRICT OF COLUMBIA

Mr. Chairman and members of the subcommittee: I appreciate having this opportunity to present the view of the District of Columbia government on H.R. 5927 and H.R. 5928, which would make extensive modifications to the local legislative process in the district.

H.R. 5811

The introduction of these bills was generated by concerns raised during last month's consideration by congress of a bill (H.R. 5811) to waive the 30-day congressional review period required for acts of the D.C. council in the specific case of D.C. Act 3-119, the "Interest Rate Modification Act of 1979". That bill was signed by the President on November 20th (P.L. 96-124).

On behalf of the citizens of the District, I would like to express our appreciation to you, Mr. Chairman, Mr. Dellums, Mr. McKinney and the other members of the House District Committee for your prompt response in resolving last month's unfortunate disruption and confusion in the District's mortgage financ-

ing market. I say unfortunate because I think in retrospect that the crisis might have been avoided in the first place and could certainly have been resolved without the necessity of asking for congressional assistance. That is why I am here today, to suggest how the Congress can help the city to prevent a recurrence of last month's crisis, something that the city and I am sure the Congress does not want to see repeated, either with respect to mortgage interest rates or any other local legislative matter.

The circumstances surrounding enactment of Public Law 96–124 demonstrated the necessity and wisdom of providing the people of the District of Columbia with full legislative automony. As you know, I am fully committed to the goal of achieving complete home-rule for the District. President Carter, Chairman Dellums, Mr. McKinney and many members of Congress have already expressed their support for granting our citizens legislative, fiscal and judicial automony. This goal should be accomplished during the 96th Congress.

H.R. 5928

H.R. 5928 would provide for the achievement of full legislative autonomy for the District by eliminating the 30-day congressional review period required before legislation enacted by the District government can take effect. This reform would result in a much more effective and efficient legislative process in the District.

USE OF EMERGENCY POWERS

The District government, as it has in the past, continues to question the need for the congressional review period for local legislation. While other factors are certainly involved, we believe that the review period, particularly the extensive delays resulting from congressional recesses and adjournments, has been a factor in the enactment of emergency acts by the District. We have used our emergency legislative powers to be as responsive to our citizens as we can and to address problems unique to the District as well as problems faced by all jurisdictions because of the unstable economic and social conditions in our nation. The congressional review period results in a legislative process that hinders effective planning by the city, impedes our attempts to be responsive to our citizens, and confuses the public about the effective dates of local legislation. I feel that the time has come for a reassessment of the details of the local legislative process.

CONGRESSIONAL REVIEW PERIOD

The inclusion of a requirement for a congressional review period for all local acts in the Self-Government Act was made by the full House committee. Earlier House versions of the Self-Government Act did not include an across-the-board congressional review period. The Senate version of the Self-Government Act provided for a congressional review period only for council actions which were beyond the scope of its regulatory authority under Reorganization Plan No. 3 of 1967. Before home-rule the D.C. Council could take many regulatory actions without congressional review. After home-rule, because of the congressional review period, the council has been required to use emergency legislation to perform not only its prior regulatory responsibilities in a timely manner, but to respond to statutory requirements imposed by the Federal Government and our citizens' needs. A classical example includes the authority, since 1973, to make the legislative changes accomplished by Act 3–119, the "Interest Rate Modification Act of 1979".

The record of the District Government's legislative activities during the past five years since the advent of home rule demonstrates that the city has used its legislative authority in a responsible manner and that issues addressed in local legislation are restricted to matters of local concern. The congressional committees, in the exercise of their oversight functions, have agreed that the congressional review function should be limited to questions of whether or not a local act exceeds the District Government's authority under the Self-Government Act, violates the Constitution of the United States, or in any way adversely affects a legitimate Federal interest. The fact that no local act has been disapproved by the Congress as inconsistent with the standards should certainly demonstrate the District Government's recognition of the interests of the Federal government in the affairs of the District, its willingness to act in a manner consistent with those interests, and its compliance with the legal requirements of the Self-Government Act.

CONGRESS AUTHORITY

Eliminating the congressional review period for local acts would in no way affect the authority of the Congress to intervene at any time on any manner in the exercise of its ultimate control over the affairs of the District of Columbia under the U.S. Constitution. Section 601 of the Self-Government Act also provides for an explicit reservation of congressional authority to amend or repeal any act passed by the council. The congressional review period is unnecessary. The property, functions and other legitimate interests of the Federal Government are adequately protected by section 601 as well as the specific limitations on our legislative authority already contained in section 602 of the Self-Government Act.

After almost five years of home-rule, it should be apparent that the congressional review period imposes an unreasonable burden on the district government, a burden that is not faced by the states or territories of the United States in carrying out their legislative responsibilities. It also unjustifiably deprives citizens of the district of rights enjoyed by other citizens of the United States. The Congress should recognize the responsible efforts of the district government and provide our citizens with full legislative automony.

H.R. 5927

I would now like to address H.R. 5927, which would extend the period of time during which an emergency act of the D.C. council may remain in effect from 90 days to 180 days, but would at the same time eliminate the D.C. council's current authority to pass additional emergency acts. The 180 day period, coupled with the proposed prohibition on successive emergency acts, would certainly reduce the total number of emergency acts passed by the council and I do not object to that goal, but I think that this could be better accomplished by other means, including elimination of the congressional review period. The bill does not address the numerous circumstances which necessitate the enactment of emergency acts by the district government and thus, would not reduce the number of issues that must be addressed by the council on an emergency basis. We do not object to an extension of the period of time during which an emergency act may remain in effect, but we do not think that change or any other changes in the emergency legislative process are needed. We do believe that further limitations on the legislative authority of the district can only serve to hinder the effective and efficient functioning of the local legislative process. The language of the limitation proposed in H.R. 5927 is vague and would only lead to confuse and further endless litigation. I am committed to doing what I can to reduce the number of issues that must be addressed by emergency legislation.

That concludes my statement. My staff and I would be happy to answer any questions.

Mayor BARRY. Mr. Chairman, the introduction of bills, H.R. 5927 and H.R. 5928 was generally generated in my view by concerns raised during the last month's consideration by the Congress to waive the 30-day congressional review period required for acts of the District of Columbia Council in the specific case of District of Columbia Act 3–119, the Interest Rate Modification Act of 1979. Your bill to resolve that matter (H.R. 5811) which is now Public Law 96–124, was signed by the President on November 30.

On behalf of the citizens of the District, I would like to express my appreciation to you, Mr. Chairman, and to Mr. Dellums and Mr. McKinney and other members of the House District Committee for your prompt response in resolving last month's unfortunate disruption and confusion in the District mortgage financing market.

I say unfortunate because I think in retrospect that the crisis might have been avoided in the first place, and could certainly have been resolved without the necessity of asking for congressional assistance. That is to suggest that Congress would go on record as supporting something which I heard you repeat many times, and also Mr. Dellums

and Mr. McKinney, and that is, how do you get the Congress out of the business of the local government?

As you know, I am fully committed to the goal of achieving complete home rule where this committee or no other committee would have any oversight responsibilities for legislation enacted by the local Council, signed by the Mayor. We think this goal should be achieved during the 96th Congress.

H.R. 5928

I support fully H.R. 5928 which would provide for the achievement of full legislative autonomy for the District by eliminating the 30-day congressional review period required before legislation enacted by the District government can take effect. This reform would result in a much more effective and efficient legislative process in the District.

CONGRESSIONAL REVIEW

The District government, as it has been in the past, continues to question the need for the congressional review period for local legislation. While other factors are certainly involved, we believe that the review period, particularly the extensive delays resulting from congressional recesses and adjournments, has been a factor in the enactment of emergency acts by the District.

I believe that the Council has used its emergency legislative powers in a responsive manner, and that the District faces a number of complex, unique problems that are faced by jurisdictions all over the region and all over the country, and nowhere can I find a legislative process as complicated and as complex as the District's.

When Montgomery County or Prince Georges County or Fairfax, Va., find they have to move quickly to enact local ordinances, they can do so quickly, whereas the average length of time even under the most expeditious situation requires anywhere from 5 to 6 months for local legislation to go through the City Council, signed by the Mayor, and then become law because of its layover time on the Hill.

I would like to add that the Council has passed a significant amount of legislation, over 300 pieces of legislation, and not one time, thanks in most instances to your support and that of Mr. Dellums and the others, has the Congress overturned any piece of legislation since 1975, so it seems to me with controversial acts such as rent control, and others, having not been overturned, that we should stop this process immediately and allow the local government to proceed ahead.

As you know, the Congress still has legislative jurisdiction over the District, which means that when there are matters that are of an emergency nature or affect the national interest, the Congress can intercede in that manner as opposed to us having to wait all that time, and hopefully in your discussion period I can point out the average length of time it has taken for legislation to lay over. Even with the reform of the 30-day calendar rule, it still means an average of more than 50-some days.

Mr. Chairman, I could go on and on about that. I think it is clear what we should do, and I think Mr. McKinney and Mr. Dellums have supported this conceptually in the past and I think it is time to put it into law, to translate concept into action, and enact H.R. 5928.

H.R. 5927

Mr. Chairman, I am going to be limited in my response to H.R. 5927. As you know, we are under court suit[1] now questioning the validity on one particular emergency act of the Council, which is the condominium conversion law. I have been advised by Ms. Rogers and others in the District Government that since we are in that category, we should be very careful about what our comments are.

EMERGENCY ACTS

Let me say in general I do not think that the emergency powers of the Council have been abused. I do not think the Council has been abusive in its actions. Even though it may be strange that eight or nine emergencies would appear to be that way, I think when you look at most of the emergencies that have been enacted by the Council, you have not had that intensive period. When you view the number of emergencies you will find probably there have been only two or three enactments in general.

What we found, Mr. Chairman, is that a large number of those emergencies, for instance, were alley closings, which means that when you get a proposal from the Office of Planning and Development or from the Department of Transportation, or the Department of Housing and Community Development to close an alley in connection with a development scheme which goes on, it is our view there is no need to take 4 or 5 months of the regular process to immediately close an alley so development of housing can take place.

If you examine that, you will find a number of emergencies around vending and ice cream, which was a situation at the time the Council moved on it. I think if you examine the record you will find the Council has been very responsive in that area. It has followed up with permanent legislation in those areas of emergency, so I would urge that we be very careful about putting a specific timeframe on an average.

6-MONTHS' LIMITATION

I think we could probably agree on some general direction, but I as not sure 180 days is adequate to deal with some of the emergency problems that are there.

Mr. Chairman, let me say it is not as though the Council has used the emergencies to circumvent the congressional review of things of national interest. If you look at the emergencies that have been questioned, even by Senator Eagleton, such as ice cream and alley closings, in my opinion they don't involve the national inetrest. So I could understand it if the Council had used its emergency powers to circumvent the congressional review period to get at things that were Federal and national interest. It has not done that, and therefore, I think we should not tamper with it in the sense that we put in a 180-day period.

Maybe we should look at it other ways. I am not sure yet what could be done. If you are going to put a period on it, a longer period certainly should be there, and I would urge the committee to think

[1] *Home Ownership Council* v. *District of Columbia et al.*, Civil Action No. 10624–79. r opinion thereon, see Appendix A, p. 67.

carefully about the 180-day period. If we have to put one, there may be a little longer period.

PERMANENT LEGISLATION

The other thing, Mr. Chairman, Senator Eagleton suggested, was that in addition to the 180-day period, the Council immediately would have to enact permanent legislation. Mr. Chairman, in some instances the emergency is abated in 90 days or 180 days or 90 days after that. The idea is that it might not require permanent legislation to get it done.

I will give an example. We have been advised by the Corporation Counsel that once you close an alley by emergency, that is closed, you cannot go back and open it up, so there is not necessarily the need to then pass a series of permanent acts. That is one example of where an emergency is abated at the time you have done it, or after you corrected the problems. We are facing now emergencies for medical paramedics. After March 31, the emergency will be over, so there is no need for permanent legislation.

I guess in summary I am asking the committee to be very careful about what it does—you are always careful, but even more careful about the 180 days or 220 days or 360 days in that regard.

That ends my testimony.

Mr. FAUNTROY. Thank you, Mr. Mayor. We appreciate both your written statement and the very cogent comments made in connection with both pieces of legislation.

EXPERIENCES WITH 30-DAY REVIEW PERIOD

I would just like to raise one question with you, and then yield to my colleague.

You did indicate the fact that the 30-day congressional review period does on the average turn out to be a little longer in fact. I wonder if you might provide figures for the record to indicate what has been the history of the layover period for the District of Columbia acts.

Mayor BARRY. Mr. Chairman, thank you. Looking at the congressional review period during fiscal year 1979, the actual layover period averaged over 52 consecutive days, with a high of 82 days, and a low of 43 days. However, these statistics are deceptive in the sense that the Parliamentarian of the House has rendered an oral opinion that actual Council acts transmitted to the Congress but which have not completed the 30-day review period before Congress adjourns must be resubmitted at the beginning of the new Congress.

The 95th Congress adjourned on October 15, 1979. The 95th Congres did not convene until January 15, 1979. Ten District of Columbia acts transmitted to Congress in 1978 failed to complete the congressional review period prior to the October 15, 1978, adjournment. Therefore, they had to be resubmitted to the Congress in 1979.

An additional 26 District of Columbia acts enacted in 1978 had to wait for the 96th Congress to convene before the congressional review period could begin. In terms of actual impact of the approval by the congressional review period for these 36 District of Columbia laws,

they averaged 122 consecutive days, with a high of 213 days in the case of District of Columbia Law 2–123, the Fire and Casualty Act Amendments of 1978.

So we are seeing, Mr. Chairman, that 30 days' review really does not translate into 30 calendar days. Now you see it, now you don't see it. So it is in this case when the Congress adjourns, even next year we will find we have to resubmit these acts again. I gave you the data, so these 36 laws really, as I said earlier, took an average of 122 days.

Mr. FAUNTROY. Thank you.

BACKGROUND OF MORTGAGE CRISIS

Would you care to describe to the committee the developments that led to the mortgage crisis in the District of Columbia, and how did the city seek to resolve it?

Mayor BARRY. First, Mr. Chairman, let me say, the president of the Federal National Mortgage Association, I think, overreacted. First of all, they did not consult anyone in this administration, including the Corporation Counsel in my office, or anybody else's office in the executive branch of the government, about the impending crisis. I think they read something in the newspapers and they decided that Judge Revercomb's order put in jeopardy their combined mortgages in the secondary market.

We discussed it with them after the fact and they agreed maybe they should have touched base with us and should have gotten the Corporation Counsel's opinion.

In the past, Fannie Mae has relied on local legal advice as to sufficiency of laws passed by the jurisdictions, but once they overreacted, we had no choice except to then use the legislative route [Council Act 3–119] to try to correct that overreaction.

We submitted the legislation to the Congress on November 6. But for the 30-day layover rule, that legislation would have become law on November 6, and we would not have needed the Congress to get involved. But because of the involvement, in this instance, in a positive sense of waiving the 30-day rule, the legislation became effective November 20.

The crisis has now been abated, but there may be others that happen that way where the local government needs to be able to act and not have to wait that average of 53 days to handle legislation in the city.

IMPACT OF HOME OWNERSHIP COUNCIL CASE

Mr. FAUNTROY. How do you feel the recent court decision by Judge Rivercombe involving condominium conversion regulations and emergency legislation impacts upon all District of Columbia emergency acts, of the past and future?

Mayor BARRY. Mr. Chairman, let me just say that Judge Revercomb's order has been wildly misinterpreted by a lot of people.

First of all, the order has been stayed—so that is a legal way of maintaining the status quo—pending the decision by the D.C. Court of Appeals, that is the first thing.

Second, the judge's order only applies specifically to the condominium legislation that was before him at that time.

Third, Mr. Chairman, maybe Mrs. Rogers would go into this in more detail, but this was a prospective decision; that is, the judge did not order things undone in the past; he said as of today it is no longer effective in the future, which means assuming the wost, that other judges would follow his lead—and this is not binding until it goes into the court of appeals and ultimately the Supreme Court—it is then legally instructive to trial judges.

At worst, it would have emergency laws that have been enacted by the Council impacted in the future and not in the past. So I think it has been misinterpreted.

Maybe Mrs. Rogers can give a little more ramifications on that from a legal point of view and put it in better perspective.

Mrs. ROGERS. I think the concern the city has is that there are a number of emergency acts pending in permanent legislation has not become effective. There are one or two where there is no permanent legislation at all before the Congress.

WHAT IS AN EMERGENCY ACT?

I think there is a practical consideration from the city's point of view, and it was raised during the oral argument before the full D.C. Court of Appeals as well. There has been a lot of publicity given to this opinion, and there is some question in the court's mind as to what the language in the Home Rule Act really was intended to allow the city to do by way of emergency action, and the silence of the Congress might be sufficient, but I think it does invite future challenges to leave it in the somewhat unsettled state.

We do not know what the court of appeals will do in its opinion, how broad or how narrowly they will phrase it. So it is in somewhat an ambiguous state at this moment.

Mr. FAUNTROY. Mr. McKinney?

Mr. MCKINNEY. Mr. Chairman, Mr. Mayor, Mrs. Rogers, and Ms. Washington, it is good to see you back. It is much nicer to see you at a cocktail party than to have you come up here.

The chairman and I are going to be operating in what the Mayor is only too well aware of called the pragmatic world of politics. I think the Mayor knows there is nothing that I would like to do more than to get us disbanded here and no longer have the District of Columbia Committee hanging around the door. The only place the responsibility for running the city belongs is down at city hall.

One of the problems I have tried to face is whether I could come up with some sort of a system that would get Congress totally out of the District affairs where there obviously were no Federal interests involved. I have left with Ms. Washington a copy of a proposal, and I hope you and members of the Council will go over it at some future date and give me some response.

EXPERIENCE WITH DISAPPROVAL RESOLUTIONS

Here is my problem. Let's look at what has happened under the regular review, forgetting the time element. We had a resolution that came before this committee concerning gas stations, and I had to sit here for 2½ hours for those deliberations. You probably remember it.

There certainly is no Federal interest in whether or not an oil supplier can own a gas station in the District of Columbia.

We have had a resolution of disapproval over gun control, and I would suggest there is no Federal interest concerning the city's desire to have a gun control law. I fact, I wish it were a little more enforced, having had a personal experience on the corner of Sixth and Pennsylvania.

We have pending a State Department's desire for a resolution of disapproval on the chancery situation.

If, I would suggest, the condominium conversion bill had come up here under congressional review, I know of two members who were going to put in a resolution of disapproval on the condominium conversion bill.

FEDERAL INTEREST

We have a resolution suggested on the heights of buildings next to the Treasury. All of this is totally ridiculous. If we cannot get Congress totally out of it, then what I propose gives the city the most flexibility to run the city. Under my proposal either one of the District of Columbia committees would be given simply 7 days to decide whether or not there is a Federal interest in the legislation that you pass. And I defy anyone to get a majority vote of either one of these committees that is going to say there is a Federal interest in gun control, gas stations, condominium conversions, or chancery locations—although someone might argue that one.

If the committees did not find a Federal interest, we could not review your legislation, you have an immediate law after 7 days. That then gets us to what happens if Congress is away on one of its recesses. You simply have a law, period. And all Congress can do when it comes back is say: Gee, there is a Federal interest in that and we are going to look at it. But again I would question that Congress could legitimately get a majority vote on any one of these committees to find a Federal interest in $99\frac{44}{100}$ percent of the legislation the City Council passes.

Emergency legislation would in essence really be almost eliminated, but if you had a two-thirds vote of the City Council you would only have to have one reading. In other words, the two-thirds vote would immediately send the bill to the Mayor and the Mayor would immediately send the bill to the Hill, and all we would have to do in either committee, not both, is just simply have the chairman call an immediate meeting and state there is Federal interest, and you would have an immediate piece of permanent legislation.

So, I just throw that out because it seems to me that if we cannot politically, practically, totally remove the congressional interest and I don't see the votes—I don't want to have the chairman have to commit himself—that at least if we can put ourselves in the position where within 7 days we tell you there is no Federal interest, you have made a law and there is none of this delay.

This would seem to remove the necessity for the emergency legislation. Of what the City Council passes, 69 percent is passed under emergency conditions and it would seem to me that is unnecessary.

For instance, you referred to alley closings. It would seem to me under this system the City Council would have the perfect right to pass a bill saying the Mayor may by edict or proposal or signature close an alley, and reopen it and do anything else he wants to do to it, and there certainly is no Federal interest in that, so you would have a law and you could operate in any fashion you wanted to.

Mr. FAUNTROY. Among the matters which the committee will be considering is the suggestion that we handle both the emergency and normal review period procedures in a fashion that a 7-day period of review would be allowed the Congress for the determination of whether it feels there is a Federal interest, in which case the 30-day period could then be invoked. With respect to emergency legislation, a simple two-thirds majority vote on the part of the Council without a second reading? Is that correct?

Mr. MCKINNEY. Without a second reading.

Mr. FAUNTROY. And signed by the Mayor, would constitute an emergency action until and unless the Congress acted specifically.

Mr. MCKINNEY. Right. Under that system all the chairman of this committee would have to do, literally, would be to poll the members and the members would then say they passed their legislation, for instance the usury legislation, and this committee would simply make a statement there is no Federal interest and you have permanent law.

Mr. MCKINNEY. We could do it in half a day.

Mr. FAUNTROY. Mr. Mayor, without committing yourself on the advisability of that formulation, I would welcome you or your staff's initial reactions to it.

Mayor BARRY. Mr. Chairman, I have just seen this for the first time a few minutes ago and Mrs. Washington informs me that we were trying to get an idea, we heard something was coming, we did not know exactly what it was.

Mr. MCKINNEY. It takes many hours in the shower to come up with these brilliant ideas.

Mayor BARRY. I would like to ask a little time, a day or so, to study the impact of this situation and to see what it would really mean. I assume, Mr. McKinney, speaking of 7 consecutive days——

Mr. MCKINNEY. Yes, 7 working days. I will give you an example. For instance, say you brought a bill up here 2 days before we went out this December. That bill would become law but we would still have 5 days after we came back to say whether or not there was a Federal interest, and as I say, we would get rid of the resolution of disapproval process totally, except in those particular ills where there is a specific Federal interest. I have been running through the City Council's acts and I would find it very hard to see where my colleagues could win a majority vote on the Federal interest in almost all of the legislation you passed.

Probably the only one where you have come close would be the chancery thing and that is only because the State Department is expressing so much concern.

Mayor BARRY. That is great.

Mr. MCKINNEY. So, you would have law, you would not have any problems with the 7 days of holding you up, and what really we would

be faced with when we came back and would be to say we have a law in effect that was passed while we were away and there is a Federal interest and we want to look at it.

What I am afraid of, quite frankly, Mr. Chairman, is going to the floor with a bill I want, losing, and then trying to come back with something that will make your life liveable, because once you lose in the terminology, you have lost. My colleagues don't have the time to understand the intricacies of the difference between, say, a total removal and a partial removal, and all they do is look at the title of a District of Columbia bill. And as the Mayor may have noticed, last week we took several bills through the House and several of my colleagues came up and said, "Will you have any votes on these?" and I said "Yes, we are going to have a vote on one, which we all know about. But," I said, "we also will have a vote on another."

And they said, "Why?"

And I said, "Because it has the words 'borrow' and 'bond' in the District of Columbia" all in the same sentence, and that is what I want to avoid.

I would just leave it with you for thought and I will look with eager anticipation for the opinion of the Council and the Mayor.

Mayor BARRY. Let me say as a matter of correction on the acting affirmatively, I have always felt it is better to do the reverse, that is, if we buy the concept and we can work it through, just preliminarily, I feel a better approach, opposed to having the committees acting affirmatively to declare there is no Federal interest. I like the idea if the committees do not act at all within a certain period——

Mr. MCKINNEY. That is what it does.

Mayor BARRY. There is a big difference. The way it is now——

Mr. MCKINNEY. I am sorry, I may have misstated it. We have to say something to say there is a Federal interest. In other words, we would have to affirmatively come out and say there is a Federal interest. If we just sit here for 7 days, it is a law.

Mayor BARRY. That general approach I like.

Mr. MCKINNEY. What I am saying, I guess, is that it would take a pretty strong Federal interest for the chairman to call a meeting and get everybody here and get them to say there is a Federal interest. Someone's case would be awfully weak if it were condominium conversion or gun control or chancery location or what have you. So I think muted silence would probably greet 99 percent of the legislation the City Council passed and you would then have a law in 7 days instead of confusion for 60 or whatever.

NEED FOR EMERGENCY ACTS

Mayor BARRY. Mr. Chairman, also I would like to suggest, Mr. McKinney, in studying this further it appears as though the approach to solving the emergency may not be adequate in the sense that there may be instances in the District of Columbia where you need to declare an emergency for the safety, welfare, and well-being of the citizens that ought to be declared immediately, on Wednesday, at 2 o'clock. I am thinking now that we have not had to face this, but it is not inconceivable that an emergency could arise around the whole Iranian crisis

affecting the District, where the City Government would have to have a special session of the Council to pass an emergency act to do or not to do some things, that would be signed in less than an hour by the Mayor, that would affect us at 5 o'clock this afternoon. I think we are going to have to have some framework in which to have an emergency act, maybe not the kind we are talking about, but certainly no emergency acts at all would not be solved under the McKinney approach because it would still mean sending legislation to the Hill.

Mr. McKINNEY. I see what you are saying. It would seem to me we could word it in such a way that we could cover public health and safety so that you do have that.

Mrs. ROGERS. The 7-day period, you see, focuses on the time after the city has determined what the legislation should be. The problem is that sometimes there is a need further back in the process for an emergency solution. For instance, in several instances we were responding to a Federal timetable when unemployment was a great problem and the Congress extended the unemployment benefits for an additional 13 weeks. That was something where the city had to react by a certain day or lose eligibility.

Now, that is something we would want to be able to respond to immediately. The process is just a lot longer than 7 days. We are talking about two readings, introduction, public hearings perhaps, committee consideration. Maybe when the council testifies this afternoon they can explore that further.

Mr. McKINNEY. That is a real problem, but at the same time, Mayor, such as a riot situation where the mayor has to say there are not going to be—do what the mayor of San Antonio did, there won't be any parades, we could do it.

Under this you could have an immediate law if two-thirds of the city council voted for it. And one committee here would just simply have to state there is no Federal interest and that could be done in the same day and in essence you have a law until it is done anyway, so you would have emergency legislation in fact, if not in total principle.

Mayor BARRY. Mr. McKinney, again we will explore this outside of this forum, but I would like for you to think about those instances where you do not need permanent legislation, and that is the emergency is abated in 10 days or 30 days, even 90 days, and you do not need to have permanent legislation to come here then to reinforce the emergency. I would say in most instances you do, but we would like to study those instances where you do not need it.

NECESSARY POWERS FOR THE MAYOR

Mr. McKINNEY. That is a real problem, but at the same time, Mayor, I have to think that the city council is going to have to get themselves a little organized to give you certain powers that you should have and permanent legislation to be able to deal. If I were mayor, I for one feel, where you get stuck with all the national problems, the invasion of political opinion and hoards of people marching for this, that and the other thing, that the city council should give you the right to be able to sign a mayor's edict that would be in effect for a period of time as long as there was a public health and safety problem, that the city

council should give you the power to close an alley or a road for necessary reasons and that the city council should have the veto over that, and then you would have these permanent powers which I think every mayor should have.

I think quite frankly, and I don't want to irritate anyone on the city council, I think they have shorted you of some of the powers that you should have to run this city, and I am afraid if I were mayor I would be in somewhat the same confrontation that my good friends Carol and Ed are in in New York City.

City councils can be as unwieldy as legislative bodies everywhere as far as the executive is concerned, but I think counsel and you should be putting a bill in front of the city council and saying:

I can't run this city if I don't have the power to stop demonstrations and such and such for a 20-day period or a 25-day period, and if they don't move towards it one of these days, I am going to move towards it and that is really meddling in your affairs and I do not want to do that.

Mayor BARRY. You have the traditional tug-of-war between councils and mayors, and naturally from the executive point of view I would like to be very cooperative and the council can be involved with oversight, but I do agree that the day-to-day running of the city should be in the hands of the mayor, and we should have certain powers, so we are debating that question now, reprograming, how much and how far.

We are going to send over to the council a new legislative agenda in January which will try to put into law an easier process to get executive functions done and yet observe the legislative oversight by the council.

It is true there are things I have to do every day, I need to do that. On the other hand, the council has a right to know, and a need to know, and be involved at certain levels.

So, we hopefully can do it without a major tug-of-war, but I am prepared to go forward and try to get as much authority as is commensurate with the responsibility.

Mr. MCKINNEY. I hope you can, and certainly the oversight should be down there instead of up here and I am hoping that is what we are achieving in one fashion or another.

Thank you for your time.

WHAT IS AN EMERGENCY?

Mr. FAUNTROY. We have not discussed what constitutes an emergency. I wonder, Mr. Mayor, if you could tell us your view as to when emergency legislation is justified.

Mayor BARRY. Well, we have been guided by section 412(a) of the charter, Mr. Chairman, on this whole question of emergencies. Legislatures all over the country are not always clearly defined, and sometimes it is a judgment that you make, but we have sort of been guided by the general direction of the council in the sense that the council determines by a vote of two-thirds of the members when emergency circumstances make it necessary that an act be passed after a single reading and it takes effect immediately upon enactment.

We have no specific definition of emergency. Our view is that the general safety, health and welfare standard is a way of trying to judge

it. Sometimes the council finds itself declaring an emergency because of time restraints, that is, if it did not act in an emergency manner, the action that it is going to take or wants to take would result in a further deterioration of the situation or exacerbation of a situation that may exist.

So I think there are not any set standards that I have seen that you can pinpoint one, two, three, four, five. Quite frankly, I think that the Council, because there has been neglect in the past, has not seen fit to be very scrutinizing prior to 1975 over what I call the deliberative things that make the Government operate, so the Council finds itself and the executive itself discovering every day there is something else needed in law to either give you additional powers or to strengthen what you already have. And if we don't get that, say, in a 30-day period or 45-day period, then the situation further deteriorates.

I will give an example, Mr. Chairman. We found even though we had a licensing act that there were some things missing that we wanted to tighten up, particularly after the fire on Lamont Street, and we did ask for some emergency acts to further define and clarify what was already there. That was one example because we could not enforce the general law with that definition.

I guess in summary, I don't have any specific standards, except the general standard of safety, health, and welfare of the people. I think most legislatures don't have specific standards of emergency outside of the general framework of that broad parameter.

Mr. FAUNTROY. Mr. McKinney.

SCOPE OF PRESENT POWERS

Mr. MCKINNEY. What powers would you have now, for instance, if we were to have another outbreak like the Hanafi Muslim problem we had? Can you declare areas of the city closed, semimartial law, or anything of that sort?

Mayor BARRY. I think using police powers, I could do that in terms of blocking off certain streets, and curfews, and using the traffic powers to stop traffic from flowing. I guess Mrs. Rogers can help me with that, but I think under that grouping, we could do that, I think.

Ms. ROGERS. Yes; there is a current law on the books now, for instance, which authorizes the police chief to make certain findings on closed streets, et cetera. I am not sure about the curfew; we had that issue before and it has been put forth in the form of a legislative proposal. One thing I think the city appreciates was the amendment you may recall made by Congressman Reuss to eliminate what was described by him as chain hanky-panky on emergency, that the emergency powers would be used to circumvent the congressional review, and if you look in the update of the District of Columbia Code you will see there have been a number of emergencies, but it is a rare instance when they have not resulted in some permanent legislation, including the condominium act, which has been before the Congress in the form of permanent legislation.

So Mr. Reuss added the amendment that says two-thirds of the members, not just those present and voting, but two-thirds of the members of the Council, had to make a finding that emergency circumstances

64-864 O - 80 - 3

warranted some acts of the Council becoming effective immediately, and that was seen as a sufficient safeguard.

LIMITING EMERGENCIES

I am concerned about the problem of limiting emergencies unless we consider it quite carefully to say, public health and safety.

For example, in the situation involving ice cream vendors, I think that has been missed in the past, in the sense that people were about to lose their jobs, their livelihood, because of electric refrigeration requirements, and therefore the Council chamber was filled with all of these small businessmen who said they had been using dry ice, and they could maintain the proper temperature, but they did not have the money to convert by the time the spring selling season started. And the Council took emergency action.

No one could have foreseen that, and the Council, it seems to me should maintain some flexibility. I think it is significant here that prior to home rule when we had an appointed government the City Council had regulatory authority under which they could pass regulations which became effective immediately without any congressional review whatsoever. Regulations were passed not only in the public health and safety area, but things like consumer protection, so that we do not want to go back, it seems to me, by putting further ties on the local government.

I think both the chairman and the ranking minority member have been strong supporters all along of giving the city the full authority that State legislatures have, subject to these legitimate Federal interests in areas which you define in title 6. The court of appeals in the *MacIntosh* case has cited approval of the statement of purpose in the Home Rule Act, that the very purpose was to relieve Congress from looking into local matters, to give as much authority as possible to the home rule government, so I hope whatever is done is in keeping with that. And I am sure, Mr. McKinney, it is, and we can just get together with your staffs and coment on it.

EMERGENCY DEFINED

One other thing here in defining an emergency. Even as it reads now, remember that section 412 was drafted by the subcommittee prior to the time there was a requirement for a congressional layover period. So there is language in that sentence which really has no meaning any more, and it needs to be clarified. Our concern with the clarification that has been proposed in one of the bills before this committee, as well as in the Senate, is that the language there is vague. What is an emergency situation? Who is to define it? Does it mean the Council can only pass one emergency in the history of the world? It is just very unclear.

It is not clear who makes that determination, and we are not solving the problem by creating, it seems to me in that language, a horrendous situation, and to some extent once the evil is defined, and it has been defined in a number of different ways, it seems of me the simplest and clearest solution is the one to grab hold of, and that is what the Mayor

has been saying in response, I think, to Congressman McKinney's proposal, is really the direction that the city would want to go, absent a removal of any congressional review whatsoever.

MAYOR'S OBJECTIVE

Mayor BARRY. The whole objective of my idea is to clearly have the Council decide what is an emergency and clearly have the Council legislate, get rid of the resolution of disapproval idea and force someone on one of these two committees to get the whole committee together and get a majority vote to say there is a Federal interest before we could do anything to you.

Mr. FAUNTROY. Mr. Mayor, I will tender one more question and then submit several others to you for submission later in the record.

We have dealt with a number of emergency actions the Council and the Mayor have taken which have been followed by permanent legislation.

NECESSITY FOR CONTINUING EMERGENCY ACTS

One of the central issues is whether or not the Council and the city government should be allowed to repeatedly pass emergency legislation without resort to permanent legislative solutions.

Would you give us some reasons and some examples of why you need to repeat emergency accounts without moving to permanent legislation?

Mayor BARRY. Mr. Chairman, I think we ought to differentiate whether or not I think the Council has the power and the authority to pass repeatedly a number of the same acts.

Separate from wondering whether or not the Council ought to do it, to me there are two legislative proposals. I think in the condominimum legislation, for instance, that the Council in my view has the authority to do that, and we have said that in court, and we go on and on and on.

Whether or not it should have happened is another kind of question. I believe that in that instance there was no easy solution to the problem and that the best solution was to continue what you had.

On the other hand, I don't think the Council wanted to put into permanent law a permanent ban on condominium conversions. So it was really a practical solution to a very complex problem.

I think you will find that in other cases there have been very few instances when the Council has just repeatedly passed emergency legislation.

So, I maintain that the Council has the authority and the power to do 10, 13, 15. But as a matter of running the government, it seems to me at some point the Council or the executive ought to come forth with permanent legislation that in their view permanently solves the problem at that particular time. That is the kind of direction that I would like to take.

The other one, in some instances I remember the situation when we were trying to find a way to authorize a subsidy for the transportation of school children.

The Council passed and the Mayor signed an emergency, but it took longer to find out how you practically come to a conclusion as to how

to integrate the Metro rail subsidies with the bus subsidy, how to collect the money, and who pays and who does not pay. In these instances, it took longer than 90 days to act.

So I guess what I am saying is that in most instances the Council ought to be ready to go forward with permanent legislation and emergencies only should be used to abate the emergency at the time that it is there.

They should not be used as a way of not dealing with the problem, even though it is complex, even though it is complicated. The condominium one is one of the most complex and complicated ones we have faced.

But even with that, I think the Council or the executive really should have gone forward with some ideas about how you solve this problem permanently.

LIMITATION ON EMERGENCY ACTS

Mr. FAUNTROY. Your view is that the 180-day limitation on an emergency act without the prospect of renewing it would not afford you the ability to deal with the practicalities of that particular situation?

Mayor BARRY. Mr. Chairman, since that earlier discussion, Mr. McKinney injected a new ingredient into the discussion. Again, we ought to just take the next day or two to look at the 180-day limit, it may be that the reality of life on the Hill is that we have to have some limitations.

I am arguing the city's position for what we would like. Naturally, we would like all we can get for ourselves forever.

But in light of the political reality up here, it may be that we will have to put together a package which will have some parcels of what Mr. McKinney proposed, some things that you proposed.

It may be that the 180 days may be part of the package of political reality that goes forward, and it may be that upon analysis the 180 days may be something we would like to discuss with the Chair and the council that may not have any real practical, negative impact outside the theoretical lack of home rule impact on the government operations.

It may be with that package coming together in some time frame, it might not be injurious to our ability to operate.

Mr. FAUNTROY. Thank you so much, Mr. Mayor, for a very perceptive and enlightening testimony. I look forward to your review of the matters which we have laid before you from Mr. McKinney and also to your responses to some of the other questions which we would like to tend to you for submission in writing.

Mayor BARRY. Thank you, Mr. Chairman.

Mr. FAUNTROY. Ms. Rogers and Ms. Washington, we are happy to have you back with us again.

Our next witness is a very distinguished representative of our business and financial community, Mr. Thomas J. Owen, the chairman of the board and chief executive of the Perpetual Federal Savings & Loan Association, whom we have asked to help us understand how we came to the mortgage crisis and also, as a businessman, to give us his viewpoint on emergency legislation and congressional review.

Mr. Owen, we are very pleased to have you before us. If you will identify the person who accompanies you.

STATEMENT OF THOMAS J. OWEN, CHAIRMAN OF THE BOARD AND PRESIDENT, PERPETUAL FEDERAL SAVINGS & LOAN ASSOCIATION, ACCOMPANIED BY GILBERT E. DELORME, ASSOCIATE GENERAL COUNSEL

Mr. OWEN. My name is Thomas J. Owen.

Mr. Chairman, with me is my associate general counsel, Gilbert DeLorme, who is a member of the staff of Perpetual.

Mr. FAUNTROY. Thank you.

You may proceed.

Mr. OWEN. I am chairman of the board and president of Perpetual Federal Savings & Loan Association.

Perpetual is one of the oldest and largest savings and loan associations in the District of Columbia having been organized in 1881 and having assets of over $1 billion.

As the chief executive officer of Perpetual, I became intimately familiar with the sequence of events which led up to the recent cutoff of purchases of mortgages on District of Columbia properties by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corp.

I would like to take this opportunity to share with you my analysis of what caused these cutoffs and what effect the cutoffs had on lending institutions such as Perpetual, and on the potential home buyers who depend upon these lending institutions to aid them in financing the acquisition of their new homes.

IMPACT OF COUNCIL EMERGENCY ACT RE INTEREST CEILING

On October 5, 1979, the District of Columbia City Council enacted by emergency legislation an act (EA3–79) establishing a 15-percent usury ceiling for District of Columbia home loans secured by a first deed of trust.

On November 2, 1979, the Federal National Mortgage Association issued notice to all sellers of conventional loans in the District of Columbia that it would no longer consider the purchase of these conventional home loans. On November 7, the Federal Home Loan Mortgage Corp. followed a similar track.

In my opinion, there were several factors which could be considered the cause of the city's mortgage crisis. Certainly, the conservative legal position taken by the Federal National Mortgage Association—FNMA—contributed to the crisis.

We must remember that at the time FNMA acted, the law of the District of Columbia permitted a home mortgage loan of 15 percent APR to be made. No one had challeneged this law in the courts; to my knowledge, no one had any plans of challenging this law.

In essence, FNMA decided that based on the *Homeownership Council Case*, the law was subject to a challenge which might succeed. FNMA then decided that this possibility was a sufficient reason to not accept loans entered into pursuant to the laws of the District of Columbia.

We also cannot overlook the fact that the city council has chosen to utilize its emergency legislative powers time and again, rather than enact laws by means of the permanent legislative process. The over-

utilization of emergency powers in other instances, when coupled with the council's decision to pass a second Emergency Usury Act rather than permanent legislation, certainly contributed to the crisis.

HOME OWNERSHIP COUNCIL *v.* DISTRICT OF COLUMBIA ET AL

It also seems fair to note that Judge Revercomb's decision of October 19, 1979—Civil Action No. 10624–79 (see Appendix B)—did not clearly spell out guidelines which the legal and business communities could use to evaluate the Districts' various reenactments of emergency laws to determine which were permissible and which were not. Given this lack of clarity, I can understand how FNMA reached its decision even though I disagreed with FNMA.

The Congress also contributed to the crisis by imposing on the District the 30-day congressional review period for all permanent legislation. Since 30 congressional days apparently equal between 60 and 90 calendar days, it is understandable that the city's fathers, over time, have fallen into the bad habit of utilizing their emergency legislative powers to act on any matter which appears to warrant prompt attention.

Finally, the District's determination to retain a usury ceiling for home mortgage loans cannot be ignored. Such ceilings no longer affect interest rates now react almost directly to the national supply and demand for mortgage funds. No city or State can affect these national factors. Thus the District is constantly being faced with a need to change its so-called ceiling to keep it in line with national trends.

Given the District's inability to pass permanent legislation rapidly, it is an obvious mistake for the Council to continue to set arbitrary ceilings which must constantly be changed if mortgage lending is to continue in the District of Columbia.

MORTGAGE CRISIS

Mr. Chairman, I do not believe that we can pinpoint any one of these factors as the cause of the mortgage crisis. All of these factors combined contributed to creating the problem. Therefore, steps must be taken to address all of these factors in order to insure the citizens of the District that they will not be faced with a similar crisis in the future.

During this crisis there existed no secondary market for the sale of District of Columbia mortgage loans. Without this source of capital, Washington savings and loan associations could only rely on savings deposits as the principal source of mortgage loan funds.

Unfortunately, savings outflows have been extremely heavy in the Washington area since August of this year. For example, in August of 1979, withdrawals exceeded deposits by some $12 million. In September, they exceeded deposits by some $33.8 million. In my own particular institution, whose experience is similar to that of other District of Columbia institutions, deposits have only exceeded withdrawals three times in the past 19 months.

Without the secondary market District of Columbia savings and l[illegible] associations do not have the funds available to make mortgage [illegible]s and thus could not accept any applications for District of Co[illegible]bia mortgages during the crisis.

The loans of 603 Washington families representing over $39 million committed by Washington savings and loans since October 5 were jeopardized by the possibility that these loans could not be sold in the secondary market. Another 262 loan applications taken into processing during this period of time but not yet committed were frozen in the application pipeline.

While we could talk about the millions of dollars in loans that were in jeopardy, I would prefer to talk about the hundreds or oven thousands of Washington area families who expected to be in their homes for Thanksgiving and Christmas.

These families were the real victims of the industry's inability to close and sell mortgage loans made in the District of Columbia. Fortunately, most of these families were spared severe hardship by the prompt action of the Congress in waiving the 30-day congressional review period. Even so, their risk during the crisis was enormous.

Couples capable of affording homes at the interest rate prevailing when they applied for loans had to live through the entire crisis period knowing that if they lost their loans through no fault of their own they could only obtain new loans at much higher interest rates. In many cases these couples knew that they could not have qualified for or afforded loans at higher rates.

Thus, these District of Columbia families faced the real possibility of loosing their chance at homeownership altogether, not just the inconvenience of a delay.

RECOMMENDED LEGISLATION

This type of tragedy must be avoided in the future. The District government and the Congress must work together to clarify the city's legislative process so that it is practical, workable and clearly understood and accepted by the courts and the business community.

In the usury area, I recommended that the interest rate for home mortgage funds be permitted to reflect genuine national mortgage money conditions free of any arbitrary usury ceiling. The District must accept the fact that its citizens must compete on a national basis for mortgage funds at the prevailing interest rate. Maryland and Virginia have accepted this modern economic reality, the District can do no less.

I further recommend that the legislative process of the District be clarified so that Congress, the city government and the courts all agree as to the number and term of emergency bills which can be enacted on any one subject. To the extent that there must be a congressional review of District legislation, this review process must be clarified so as to permit the city to conduct its legislative process in a rational manner.

There should be no excuse for the District to utilize its emergency legislative process in lieu of the permanent legislative powers granted it by the Congress.

Mr. Chairman, this concludes my remarks. I would like to thank this committee for the opportunity to appear before you today.

Mr. FAUNTROY. Thank you so very much, Mr. Owen. I would like to tender a few questions to you.

You have outlined to us the impact of the court decision, and the actions of the FNMA and FHLHC on loans in process.

IMPACT OF COURT DECISIONS ON INVESTMENTS

I wonder if you would care to comment on the impact of this emergency problem as relates to the entire investment climate in the District of Columbia. What does a stifling in this area do in a rippling effect fashion on investment in the city generally?

Mr. OWEN. Of course, the inability to command mortgage funds has a terribly debilitating effect on investment opportunities in the city.

Most investments in this city escape the usury ceiling, but it seriously affects our home builders and our home remodelers who have to rely on the funds that are to be loaned to their purchasers in order to continue in business.

So at the time the developers themselves were carrying interest rates of, say, 17 percent, awaiting the sale of their properties to the ultimate home buyers and then for a period I guess of now 10 days almost, that that was a burden. That has certainly got to discourage people from coming to our city if they feel that when acting in good conscience under the laws as they see it, the court can come in and upset the reactions of the citizens when they were acting in good faith.

RECOMMENDED LEGISLATION

So I think the need for clarity of the emergency process is very badly needed. The city's abuse or overuse, whichever term you prefer to apply to it—on the other side of the Hill they call it abuse—I think that should be addressed.

I think the City Council has had an opportunity to enact permanent legislation as a followup to their emergency legislation and may not have taken all the time that they could have to do that.

I like Congressman McKinney's possible suggestion that we eliminate certain areas or consider the possible elimination of certain parts of the city's legislation from the 30 days existing review.

I think it would be very appropriate if we could set up some expeditious way in which the Congress could respond as to its lack of interest in certain areas so that the city is not forced to do this.

Mr. FAUNTROY. You indicated support for a formulation that is likely to come before both Houses of this Congress with respect to the elimination of usury limitations across the country as relates at least to Federal programs. You also point out that such is the case in neighboring Maryland and Virginia.

EFFECT OF REMOVING USURY LIMITATIONS

Would you care to tell us what, in your view, the effect of such elimination of a limitation by our Council and approved, of course, by the Congress, would have on home buyers in the District of Columbia?

Mr. OWEN. Mr. Chairman, when I became president of Perpetual 4 years ago and subsequently became chairman, I had noted that in previous years that we at Perpetual would lend money at the lowest possible rate we could afford to lend it to home buyers and then about every 3 years we would run out of money.

It occurred to me during one of those periods where we had no money that there is only one thing worse than charging people a national

market interest rate which might appear high in our local economy and that one thing that is worse is having to tell people you don't have any money at any price.

That is the condition that has existed here on numerous occasions in years past, through no fault in many cases of the city government; in many cases because funds, savings flows in District institutions, were not adequate to meet the demand, and institutions were not as active in the secondary market as they could have been.

That has reversed itself now and there is a very active secondary market nationally for first trust mortgages.

In order to get money into the District of Columbia, it is imperative that I as a lender and other lenders like me be able to deal in that secondary market.

The secondary market has been dropping the past 4 weeks. I believe it is down to about 13 percent or slightly below. I hope we see it come even lower because we also notice that people are not willing to pay 13 percent and the residential home market dries up. That is what is called supply and demand.

I think supply and demand can seriously affect interest rates much more so than arbitrary usury ceilings.

What you are seeing now is long-term mortgage rates which are very competitive with long-term bond rates. Long-term mortgage rates got as high as 13.7 or 13.8 percent, and they are now down to 12½. That is during a period of 6 weeks, and I attribute that to the public's unwillingness to pay the price for money.

So it is not the lenders take a simplistic approach to home finance and they lead you to believe this. You cannot just hold people up and they will not pay those prices. The diminution in the yields recently in the secondary market are adequate proof of that.

Mr. FAUNTROY. Let me clearly understand the situation with respect to the District.

While Maryland and Virginia do not have usury limitations, if a citizen of the District wished to purchase housing in the District and you could not handle his need, he could not then go to suburban Maryland or Virginia to acquire the money at their rates?

Mr. OWEN. No, he could not.

Mr. FAUNTROY. He could not do that.

So that your recommendation of eliminating the limitations is really to put us on an even footing with people around the country?

Mr. OWEN. Yes.

Mr. FAUNTROY. Thank you very much for that bit of testimony.

Are there any questions of counsel?

Thank you very much.

Hearing none, we will conclude this portion of the hearing and resume at 1 p.m.

Whereupon, at 11:26 a.m., the subcommittee recessed, to reconvene at 1 p.m. the same day. It was reconvened at 1:10 p.m.

AFTERNOON SESSION

Mr. FAUNTROY. The hearings of the Subcommittee on Government Affairs and Budget will come to order.

It is always a pleasure to welcome to our hearing the distinguished Chairman of the City Council, the Honorable Arrington Dixon. He will give us a picture of the present situation facing the District of Columbia in terms of legislative process, and hopefully suggest some methods for improving it as it relates to emergency legislation and congressional review.

Mr. Chairman, we are pleased to welcome you here and, with you, a very familiar face to the members of this committee, Mr. James Christian, General Counsel to the City Council. I am pleased also to welcome Mr. Bruce French, Legislative Counsel to the Council.

Thank you for appearing. You may proceed.

STATEMENT OF ARRINGTON DIXON, CHAIRMAN, COUNCIL OF THE DISTRICT OF COLUMBIA, ACCOMPANIED BY JAMES CHRISTIAN, GENERAL COUNSEL, AND BRUCE FRENCH, LEGISLATIVE COUNSEL

Mr. DIXON. It is always good to be before you, Mr. Chairman, in whatever capacity.

Today, we are here obviously to address the two proposed bills, H.R. 5927 and H.R. 5928.

I would want to first put in the record my extended comments, which I think have been made available to your staff, and just make a few brief points now, and make myself available for questions.

First of all, we do believe in a home rule vein that we would not like our powers or our actions reviewed by Congress. More specifically, we obviously, as you know, are concerned about the 30-day review our legislation goes through now, and certainly feel that that has been one factor that has caused the Council to use emergency powers.

In my statement, that is discussed, and we cite examples of that phenomena. Therefore, I would hope that part of the consideration at this point or in the future would be the removal of that review entirely which would allow greater flexibility and may eliminate some of the need for the concerns around our emergency powers.

I do think the Council, though, has used those powers in a proper manner, and I state that more clearly in my statement.

Also, I would want to point out on November 8, 1979, I, as Chairman of the Council, did introduce a rule change to the procedures of the Council to require a more extensive justification, if you will, an investigation by members who were to move emergency legislation.

My sense is that that type approach done by the local body would in, fact, reflect the leadership of the city in addressing its own problems, and would, in fact, be a very useful and appropriate approach to some of the concerns that have been raised, and I want to call your attention to that, and it is cited again in my statement, and I hope that you would certainly yield to that direction in any further deliberation.

At this time, I would want to open myself up to questions. I do think my statement is clear and extensive enough and would make my bill on the rule change legislation a part of the record along with my statement.

Mr. FAUNTROY. Without objection, your entire statement will be made a part of the record.

[The prepared statement of Mr. Dixon follows:]

PREPARED STATEMENT OF CHAIRMAN ARRINGTON DIXON

Mr. DIXON. Good afternoon, Mr. Chairman, and members of the committee. I am pleased to appear this afternoon, in response to you request, to comment upon proposed bills, H.R. 5927 and 5928, introduced by yourself, Mr. Chairman, and Chairman Dellums and Congressman McKinney.

These bills provide for the conditions under which the council may enact emergency legislation and change the nature of congressional review of permanent council acts.

As you know, the power of the council to successively reenact identical emergencies has been challenged in the District of Columbia courts in *Washington Home Ownership Council* v. *District of Columbia*. The Court of Appeals held an *En banc* hearing with respect to this matter on November 26, 1979. I know that you will appreciate my need to be circumspect in my comments today so, as not to prejudice our litigation position.

I believe that the Council of the District of Columbia has properly exercised its emergency powers, and that any adjustments to that authority are unwarranted at this time.

BACKGROUND OF EMERGENCY LEGISLATION

The true nature of the Council exercise of emergency legislative power, must be read in conjunction with the 30-day period of congressional review which is the subject of H.R. 5928.

The extended period of congressional review, has often required the Council to enact emergency legislation. The most dramatic example of this fact can be seen by reviewing the record associated with the Condominium Act of 1976, D.C. Law 1–89. Following transmittal to the House and Senate on September 15, 1976, the measure did not become law until March 25, 1977—a full 198 days later. Under such circumstances, there can be no question that emergency enactments of the permanent legislation is necessary.

The most forthright manner in which to address this problem is through the elimination of the thirty-day period of congressional review. In this way, the Council could exercise its deliberate legislative processes, confident that once legislation was adopted after two readings and signed by the Mayor, it would become effective shortly thereafter. Extended periods of congressional review require that the Council enact emergency legislation to protect the public health, safety and welfare of District citizens.

The Council's exercise of its emergency power faithfully follows the carefully prescribed provisions in the Home Rule Act. Only if two-thirds of the Members of the full council vote to declare that emergency circumstances exist, does the Council then move to the consideration of the emergency measure which, if adopted, would become effective upon approval by the Mayor and remain in effect for no more than 90 days. As you know, Mr. Chairman, the ability to move such a significant majority of the members of the Council to take such an action, with its far ranging political consequences, is a very serious undertaking.

The resolutions declaring that emergency circumstances exist are well documents, often presented on behalf of the executive branch of the government or our independent agencies, and often by members. I should add that not even the litigants in the pending court of appeals case have challenged the adequacy of these legislative declarations of emergency circumstances, finding them to be well founded. In fact, we have had no complaints with respect to the actual process used to declare emergencies, which in my judgment supports the conclusion that no action by the Congress is needed.

PROPOSED AMENDMENT TO COUNCIL RULES

Parenthetically I might add, that I have introduced an amendment to the Council's rules which will strengthen the finding of fact requirements associated with emergency action, so that the members will have even more information at their disposal in making a judgment if an emergency exists.

Before closing, Mr. Chairman, let me turn briefly to the specific provisions of the two bills before the committee. While I do not believe that either bill should be enacted in their present form, I want to share with you several technical problems with the bills.

H.R. 5927

First, my observations with respect to H.R. 5927. On page 2 of the bill, the language "if such [emergency] act is for the same purpose and covers, in whole or in part, the same subject matter as any prior emergency act and is based on the same emergency as that on which such prior act was based" is used. My concern with these clauses is their ambiguity: Let us take the example of preservation of rental housing stock in the District of Columbia. At one point, the Council might believe it to be an emergency and in the public interest to limit conversions of certain rental units: In another, the Council might determine that automatic pass-through of certain utility bills, and not others, to be appropriate; and in a third circumstance, certain tax relief is deemed to be appropriate. All of these of course are for the "purpose" of preserving a rental housing supply, though they are different solutions to the same problem. Would these require enactment of amendments to the first emergency, or could they be considered as separate subjects. Could we circumvent the "same emergency basis" requirement by finding that a new set of facts, 2 months later have arisen, and that a brand new emergency could be enacted?

My brief example is not meant to be exhaustive, but reflects some of the problems of interpretation and definition which are likely to plague our activities should H.R. 5927 be enacted.

H.R. 5928

While the intent of H.R. 5928 appears to be that most Council enactments would become effective without congressional review, I am not certain that the bill as drafted provided for such an interpretation. In addition, I am certain that the requirement of congressional review of acts "relating to crimes, criminal procedure, and prisoners" was meant to only include those codified in titles 22, 23, and 24 of the D.C. Code in accordance with the special provisions in the District Charter affecting amendment of those titles.

In closing, Mr. Chairman, I appreciate the opportunity to have been able to testify today, and trust that my statement has been helpful. I am prepared to answer any questions that you and the other members of the committee might have.

Mr. DIXON. Thank you.

Mr. FAUNTROY. Mr. Chairman, let me follow up on your latest comment dealing with the change you have recommended to the Council with respect to the establishment of an emergency.

The bills which are the subject of this hearing as you know, deal with two subject matter areas: One, H.R. 5927—that of limiting the emergency powers to cover a 180-day period without renewal on legislation that addresses the same purpose and substantially deals with the same situation.

The second—H.R. 5928—has to do with the congressional review process.

The committee will also have before it in short order a bill offered by Mr. McKinney, which recommends that the emergency powers be eliminated altogether. Measures passed with a two-thirds majority vote by the Council and signed by the Mayor would go into effect immediately. Other acts pending a 7-day review period during which the Congress could determine whether a Federal interest was involved, would go into effect thereafter unless the 30-day review period, where the Congress during an initial 7-day review period determined that there was a Federal interest, was invoked.

In examining Mr. McKinney's suggestions, it occurred to me that a way of helping us delineate between emergencies which can be followed by permanent legislation and emergencies which for practical reasons should not become permanent legislation, we might look to the Council through its regulation process to structure procedures that

would assure the Congress that, if there were a 180-day limitation period, there would be exceptions when, for practical reasons, it did not behoove the Council or the Congress to enact permanent legislation.

Having said all of that, I am interested in you explaining to us the nature of the regulation which you recommended to the Council with respect to emergency powers and legislation passed by the Council.

PROPOSED CHANGE IN COUNCIL RULES RE EMERGENCIES

Mr. DIXON. The resolution which was presented to the Council on the 8th of November basically changes by resolution the rules of the Council and would, in fact, require that bills presented to be considered under the section for emergencies have a detailed statement of reasons for the emergency, its fiscal impact, if any, comments affecting Government agencies and members of the public rather than as now—those provisions are not required—and also any temporary modifications in laws which would be, in fact, done by emergencies would be cited and included in the transmittal to the Council prior to the legislative session.

All these matters would, therefore, I think, extend—and certainly this is still subject to review and expansion by the Council, this rule change, but would extend the requirement for clarity before the Council and for preparation of the Council members. Before, they, in fact, were asked oftentimes on the dais in the legislative meetings to consider emergency measures.

So, that is the initial effort, to put in place a vehicle to screen, if you will, our emergency efforts at the local level in a more effective way.

Mr. Chairman, I would like to elaborate a little more and speak to some of the other points that you raise. I think certainly in this forum I do not have to express, with your chairing, the importance of the independence of the local body in its work, legislatively and any other way. I do think there is a very simplistic principle here, and that is that the Congress can, if it will, change almost anything that we do in the District of Columbia by its legislative authority at this point in time.

So, whether there is 180 days, 6 months, whatever the emergency might be, or whatever the period might be, we can still be affected in some ways, I think, unfortunately, by the Federal concern in the Congress, by measures being moved through this body.

I also think, therefore, it really is rather odd that the requirement for review of any sort be, in fact, a part of the concern of this body.

I would point to a number of pieces of legislation, and this carries me beyond—in other words, if the Congress can act to change anything we do anyhow, why, then, do they need to be worried. If they feel we are doing something through an emergency measure, this Congress can act to modify that almost overnight through its expedited processes here.

I also think that there are measures that have had much more significant Federal impact that are permanent pieces of legislation. The focus here is on congressional review of emergency pieces and their abuse of the Council using the emergency pieces. We have a number of

pieces that I have some personal trouble with and voted against that are here that have more extensive impact.

The earlier professional tax bill that moved through the Council has raised much concern. Rent control, which is permanent legislation, the chancery legislation which we are now dealing with, a bill we are considering for revenue source that deals with tax-exempt properties—all of those measures have nothing to do with our emergency powers, but do have some local concern and also have Federal concerns associated with them.

CONGRESSIONAL 30-DAY REVIEW PERIOD

The point I am making is I am not sure why the review is necessary, again, because Congress can act on permanent or emergency pieces whenever it sees fit, and I think we would hope they would not bother any of our measures, but certainly the review period is not necessary, and I think to debate how emergencies come and go is a local concern and the impact legislatively is one, whether it be emergency or a permanent piece, could be, in fact, dealt with by the Congress in its existing powers and its existing authority.

So, my position is I think the 30-day review is not necessary, nor any review is necessary, and I think the concern for emergency procedure and process is a matter which also has similar value because, again, the Congress can act and can, in fact, involve itself, as I hope it will not, but could if it felt we were moving improperly.

Mr. FAUNTROY. Mr. Chairman. I wonder if you would outline for the committee what effect this 30-day congressional review period really has upon the District's lawmaking process?

Mr. DIXON. In my statement we have an example of the extended period of congressional review, that oftentimes requires the Council to enact emergency legislation. I think the most dramatic example of this fact can be seen by reviewing the record associated with the Condominium Act of 1976, District of Columbia Law 1-89. Following transmittal to the House and Senate on September 15, 1976, the measure did not become law until March 25, 1977, a full 198 days later.

There was no question that we needed to, in fact, enact some measure to carry out the requirements and the mandate of the Council, and, therefore emergency measuers were in order. I think this highlights the kind of problem we have had at the local level.

Mr. FAUNTROY. We had some average time given for the review process. I wonder if you would care to tell us what the average is.

REVIEW PERIOD AVERAGE TIME

Mr. DIXON. The number that staff recommends is 52 to 60 days that we have had to wait. Again, I would add to that, the review of those items, whether there was need for review at all by the Congress, to even have that time taken, and to just fashion an emergency guideline around a figure of average time of congressional review is to fashion a guideline around an unnecessary phenomena to start with, and I go back again to the refrain that I don't see why the review is necessary.

We understand and respect the existing authority of this body and Congress, and we know they can use it when they see fit, and,

therefore, I am not sure why we have to, and I would hope that would change, too, in time.

Mr. FAUNTROY. Would you describe for the committee the recent developments which led to the mortgage crisis in the District of Columbia, and how the city sought to resolve those issues?

BACKGROUND OF MORTGAGE CRISIS

Mr. DIXON. As you know, the Council did, in fact, pass legislation to establish a mortgage rate. That legislation did, in fact, move through committee, and was moving through the Congress but was not moving through in a timely manner from the Council or the Congress for those rates to become effective, and the Council put in place emergency legislation to establish those rates.

That is the basis of the phenomena that is the legislative process around the mortgage rates. We acted through emergency again because permanent legislation would not move fast enough for us to deal with a current crisis in the city as to the ceiling on interest rates for mortgages.

Mr. FAUNTROY. How, in your view, does the recent court order issued by Judge Revercomb involving condo regulations and emergency legislation impact on all emergency acts of the past or future?

Mr. DIXON. I would respectfully not want to suggest any merit to the arguments that are in court against the powers of the Council by the judge and hope the higher courts will in their wisdom support my position that we acted properly and that the concern raised by plaintiff was improper.

REVIEW OF COUNCIL EMERGENCY ACTS

Mr. FAUNTROY. Do you feel that the practice of repeated renewal of emergency legislation indirectly helped to create the mortgage crisis and resulted in closing of the lending markets?

Mr. DIXON. I think not. My statement publicly has been that the action was a bit premature and precipitous. The Council was, in fact, through its emergency powers, acting properly and creating an environment of predictability for the institutions to operate until we passed permanent legislation. The answer is no, I don't think it created the proper environment for the action taken by the financial institutions.

Mr. FAUNTROY. Do you believe that the Council's utilization of legislative power to enact successive emergency acts of a similar nature circumvents the congressional review requirement applicable to permanent legislation?

Mr. DIXON. No, I think if the record is checked, there were only a very few emergencies that were reenacted that were not followed by permanent legislation. So there was certainly no effort to circumvent, but usually an effort to either buy time for the Council to deliberate or allow Congress to in fact move forward with its review process. So the answer is no; it was not an effort to circumvent.

Mr. FAUNTROY. Can you tell us how many emergency acts have been passed since the passage of home rule, and what percentage of all legislation passed the emergency legislation constitutes?

Mr. DIXON. The Council has passed since January 2, 1975, until December 1, 1979, 361 emergency acts. The permanent acts passed are 377 and, in fact, that represents about a 49-percent emergency acts passed to permanent acts passed. (For list of these emergency acts, see appendix C hereof on p. 142.)

REASONS FOR EMERGENCY ACTS

Mr. FAUNTROY. Would you tell us why nearly half of the measures passed were done so on an emergency basis?

Mr. DIXON. I think, one, again congressional review had some impact, a serious impact. And, second, I think the Council, trying to operate as a deliberative body has had to use the opportunity to prepare and review its permanent legislation prior to enactment. That is one thing about the court's view that troubles me a lot; that there is some suggestion that there should be permanent legislation accompanying emergency legislation. Frequently, the Council is not ready to move forward permanently beacuse it has not had a chance to deliberate over the matter in a permanent manner, and I think that has been fact No. 1, the review period, and, No. 2, the fact that the Council does, as this body, need time to deliberate before it might put in place a permanent piece, and the emergency measures provided that time for it.

I would also suggest as a footnote that the Council struggled for additional staffing support, which was recognized this time by Congress in a significant manner, which has helped and will also be a factor to give us the kind of structure and staff and research capability to maybe move more expeditiously and take less time. The condominium conversion is an example of that, where a commission had to be pulled together of additional resources to study the problem, and that took time leading to emergency pieces to hold the problem in check, and I think that is another problem we have at the Council that we are still trying to grapple with through our budget process.

Mr. FAUNTROY. Your attempt to improve the regulations of the Council with respect to emergency legislation really speaks to the concern that many on the Hill have. What criteria would be utilized in determining when an emergency exists and therefore when emergency legislation is justified?

Do you feel that the criteria, on the basis of past emergency legislation which has been passed, has been met over the years since the adoption of home rule?

Mr. DIXON. I think my voting record as a member of the Council would reflect where I might differ with the body's movement as a collective group, but, as a general statement, I think the answer is yes; I think the Council has acted reflecting a review and a sensitivity to the emergency nature of its measures.

I do think, though, that the regulation changes would help document future actions and help focus both the Council members as well as the community's view and focus their attention to the guidelines that may have been unstated and unwritten before, but now would be required and would, in fact, create a framework for greater public scrutiny of, in fact, our emergency efforts.

But I do think the Council informally and intuitively certainly has considered those matters when it has moved forward in the past.

Mr. FAUNTROY. There were, on occasion, as I have indicated, emergency acts which were passed successively. Would you provide for the committee the reasons for those repeated emergency acts instead of the development of permanent legislation?

Mr. DIXON. A couple of cases, and I would want to maybe supply more detail for the record here, but I can think of a few instances—again, citing that most emergency pieces were followed by permanent—delay in Congress as well as staff time and deliberation time caused some other repeated emergencies being introduced and passed, and also there were some measures that were seasonal, if you will, that required emergency action, and once the season changed, the actions were no longer felt necessary.

Particularly I would point to matters that dealt with tourism, vendors, where, in fact, we had a climate of an effort to encourage small entrepreneurs in the city, and we needed something to allow them the flexibility that they did not have before the present home rule government to get involved in that marketplace. So we introduced or enacted maybe emergencies there and maybe repeated ones without following in some cases with a permanent piece, reassessing the whole picture during the break in the season.

There is one dealing with boating regulations. When the season of boating hit us in the summer, we realized there were some safety requirements and some rules that needed to be promulgated, we thought, to allow proper review and control of the boating without our waterways. That measure was, in fact, acted on, and I believe it was later not enacted in a permanent way because they were other concerns dealing with it that were finally analyzed and eliminated further legislative action.

But there are a number like that, and we could provide examples for the record—again, I think, reflecting deliberations and sensitivity that we feel, and I know you do, Congressman, at the local level, that others might not feel when you read titles and don't know the background and pressure being placed on us from our constituents.

STREET VENDORS LEGISLATION

Mr. FAUNTROY. There has been some concern expressed on the emergency acts with respect to street vendors, for example. Could you explain to us why, when in an emergency, vendors could not electrify their freezing capability, 1 year later there might not be permanent legislation that would deal with the purpose of the original concern which gave rise to the emergency.

Mr. DIXON. One of the reasons is financial. These are small businessmen who wanted to compete in a market, and the equipment they had did not meet some existing regulations that had been promulgated, I think, at that point, at the Federal level. And we were trying to tailor our regulations during that season to meet their particular interests and needs.

After we discovered one group that needed to operate and wanted to operate in the mall area, we found other vendors who were being

restrained from operating in other areas, and the impact the regulations that had been generated at the Federal level would have on the permanent establishments along those streets and corridors they wanted to operate in. So it seems to be a rather trivial thing in this great august forum, but in the City Hall it was a very important one, and the chambers were jammed with entrepreneurs and small businessmen, if you will, who were being cut out of the market.

And here again is an example of the fiscal impact in many cases because they could not afford the quick change to the regulations that had been promulgated at the Federal level.

Mr. FAUNTROY. That emergency existed in the spring and summer of 1979. What about the spring and summer of 1980; will there be permanent legislation?

Mr. DIXON. The small businessmen now have been able to gear up and tool up.

Mr. FAUNTROY. It would be necessary to pass emergency legislation again with respect to this matter?

Mr. DIXON. We are, I think, as prudent as this august body, and we hope our local merchants will have taken the hint and now those who want to be responsive have tooled up, we believe, to take care of that problem. That is why I don't think even the next summer—that goes back a few summers now, legislation has been needed to take care of the problem—but at that point we needed it and during the break between that summer and the following one, many persons did tool up to deal with the requirements that existed at the Federal level.

Mr. FAUNTROY. Did the vendors understand when the emergency legislation was passed that there would be no permanent legislation following it?

Mr. DIXON. Well, I am not sure they all had the feeling, Mr. Chairman, but I certainly know some did, and those who didn't certainly got the message and either got out of business or made the change.

FEDERAL INTERESTS

Mr. FAUNTROY. How would you suggest the Congress oversee its responsibility for the Federal interests while at the same time streamlining this city's legislative process? How can the Congress satisfy itself that it has inquired and protected the Federal interest as relates to measures passed by Council?

Mr. DIXON. Mr. Chairman, I am also sensitive to the concern about the Federal presence, but I would suggest the Congress do what it has done—nothing. They have not reversed one yet, and I hope they do not reverse any in the future. I think we are doing things—there have been concerns by many interest groups that have brought their concerns about a process, when maybe there are issues rather than processes they are concerned about, and a process that might serve one group 1 minute or one legislative session that might not serve that same group in another legislative session, and we are trying to strike a balance, and the Congress has not intervened before, which raises the question about, is there a need to review for intervening, and I think there will have to be some appreciation for the capability of our local officials to exercise judgment and concern.

The emergency again is not the focus; it is just our authority over our jurisdiction, and I cite permanent legislation which might be even more sensitive that I would hope would reflect and be supported by this Congress because of the local concern for the issue that was raised. I mentioned several of those already.

Mr. FAUNTROY. What mechanism of review can be structured that would not impede the legislative process and would serve to render unnecessary such devices as emergency legislation?

Mr. DIXON. I am not sure—maybe I should ask you to repeat the question. I was distracted.

Mr. FAUNTROY. What mechanisms of review can be structured that would not impede the legislative process as you must go through it and yet would serve to render also unnecessary such devices as the emergency powers?

Mr. DIXON. Well, I guess all bodies need the emergency capability, so I am not sure there is any way that we could eliminate the need for that. I think that the issue here in a nutshell, as I see it, has not to do with the emergency or permanent, but has to do with the necessity, as you cited before, just Federal review of our actions, and I would suggest that we do as our President has done: Eliminate the Congress from the involvement of review of our measures, and realizing that the Congress can repeal or supersede any action we take at any time. And that is true, I think, not only of our jurisdiction but Federal laws many times can in their own way deal with even other local jurisdictions, and I would suggest the same process could exist without any review period being defined by the Congress at all.

Mr. FAUNTROY. You have certainly answered well the question which is going to be asked by Members as we move forward with this measure.

H.R. 5928

Finally, let me ask how you would react to the recommendation as contained in H.R. 5928, which deals with the review process. Is that a process which maintains both the integrity of the Council while offering adequate consideration by the Congress?

Mr. DIXON. Mr. Chairman, I think that certainly brings us closer to the reality that I think at some day with your leadership and others we will reach. But there is no intervention or review.

It also is rather interesting to note that there are many staffers and many other people who are part of our community who can affect their local issues in their local forum. Certainly, that is why we have that period, for constituents to react. I think there certainly is merit in moving in that direction.

So I am not saying categorically that is the answer, but it brings us closer to it clearly with the reduction in days and using the reduction period that is there for our citizens. It brings us closer to that point.

Mr. FAUNTROY. Thank you.

I am going to yield now to questions from counsel.

Mr. SINGLETON. I think most of the questions I would ask regarding these two bills have already been asked. The other questions I have relate to the proposals Mr. McKinney made this morning and that is the subject for another day.

COUNCIL STAFF PROBLEMS

One question that did present itself to me, Mr. Chairman, was again relating to the emergency powers of the Council.

I have heard it said in many different contexts that the Council has staff problems. That is to say, there seems to be an inadequacy of staff in many instances for the job, a tremendous job since the City Council has duties of a State legislature as well as those of a City Council.

If that is a fair statement or assessment, I was wondering if one of the reasons for the number of emergency enactments might relate to the fact that this gives the Council time or buys time for the Council to gear up to get the staff working to provide it with the necessary information for permanent legislation.

I was wondering what your feelings might be with respect to that comment?

Mr. DIXON. There is no question in my mind but that that is one of the big factors. This is one that really troubles me. I think it would not hurt to put in the record that this body knows that the Council is the embryonic structure or instiution within the local government. We are the newest.

There has been an executive branch around with its 40-some odd thousand people servicing the citizens for "x" number of years, at least 100 and some years or more, and the courts have been there. But the Council just received its real legislative authority only 4 years ago.

We must at some point, this Congress and this Nation through its representatives here, must reflect upon how we can make that institution independent enough to exercise the quality-type judgments that I think we already have, but in a more timely way and in a more competitive and/or analytical way.

The bill I indicated to change the rules cites a necessity for fiscal impact. We can't do a fiscal impact study if we don't have the staff.

This Council has the GAO capability and an auditing ability, but it is not there to do fiscal impacts for the Council. The Council was asked to make an assessment of budget impacts and review.

I think we do a fine job, a thorough job, but it is very tough to do it with one or two budget people. There are a multitude of staffers here who review.

The point I am making is a yes, a very extreme yes to your question. We have to be viewed as an embryonic structure that needs to be provided resources to grow and assume and continue the quality work we have done, but even in a more efficient and exacting and more in-depth manner.

Mr. SINGLETON. Thank you.

Mr. Fauntroy, that would end any questions that I have. Thank you.

Mr. FAUNTROY. Mr. MacIver?

AMENDING COUNCIL RULES

Mr. MACIVER. One question I had about a change in the Council rules, you are going to have a factual statement of the emergency in the resolution that accompanies the emergency act. Is that your proposal?

Mr. DIXON. Yes. We are asking that that be a part of the resolu-

tion to declare the emergency and that it reflect fiscal impact and also impact on other agencies which means there would be a requirement, almost, that the executive branch would have to come in and speak to or at least reflect its view of the impact on its agencies.

The answer is yes, that would be a requirement of that resolution of declaration.

Mr. MACIVER. Then would you consider it being such a good idea that it perhaps ought to be either an act of the Council, signed by the Mayor and somewhat binding on future Councils, or actually in the charter by being submitted to the people or adopted by Congress?

Mr. DIXON. You see, the problem that we have is that—this is why the whole thing goes back to the review period, the review itself, because anybody can waive its rules or there is the same threshold requirement for waiving one's rules as there is for passing the declaration of emergency or to have a resolution to declare an emergency.

That is why I would suggest that even though I think we need to lay it out more and it would be the requirement for laying it out more and the charter could be a place for it, though I would hope we would not have to do that, I think the Council in the end can monitor itself and I would hope—I guess what I am fighting is that we not ask that the Congress try to restrain us because I think we can define, through our own rules, restraints that we will have to in the end respect anyhow.

Even though the charter can mandate, there are always ways of legislators, as we know, to deal with that in a good faith way but not necessarily meet the spirit that is before us today, the spirit of whether there is an emergency or whether we can justify it or not.

Mr. MACIVER. Can we have a copy of that proposal for the record?

Mr. DIXON. We made it part of the record and we would gladly share it with you.

[The proposed rule change, as finally adopted on Mar. 4, follows:]

A RESOLUTION, 3-346 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 4, 1980

To amend the Rules of Organization and Procedure of the Council of the District of Columbia relating to the agenda for Legislative Sessions; and the filing of emergency matters

Resolved, by the Council of the District of Columbia, That this resolution may be cited as the "Council Agenda and Emergency Matters Amendment Resolution of 1980".

SEC. 2. The Rules of Organization and Procedure of the Council of the District of Columbia, effective March 27, 1979 (Resolution 3-53) are amended as follows:

(a) Section 401(c) is amended by (1) redesignating paragraphs "(3)", "(4)", "(5)", "(8", and "(9)", as "(6)", "(7)", "(8)", "(9)", and "(10)" respectively; (2) redesignating paragraphs "(6)" and "(7)" as "(4)" and "(5)", respectively; (3) revising redesignated paragraph "(8)" to read as follows: "Reading by short title and vote on proposed resolutions, except as provided in paragraph (3);"; and (4) adding a new paragraph "(3)" to read as follows: "(3) Reading by short title and vote on proposed ceremonial resolutions: *Provided*, That such resolutions have been circulated to each Councilmember at least twenty-four (24) hours before the legislative session;";

(b) Section 503(a) is amended to read as follows:

"(*a*) *Committee on Human Services*

"The Committee on Human Services shall be responsible for matters concerning welfare, social services, health, public libraries, recreation, cultural affairs, youth affairs (other than corrections) and the concerns of the aging.";

(c) The following section is inserted after section 408:

"*408a. Presentation of Ceremonial Resolutions*

"(a) No Councilmember shall be permitted to present more than two (2) ceremonial resolutions during a legislative session.

"(b) No Councilmember shall be permitted to speak more than two (2) minutes on each ceremonial resolution.

"(c) No recipient of a ceremonial resolution shall be permitted to present a display or performance during a legislative session.

"(d) No more than one recipient for each ceremonial resolution shall be permitted to speak during a legislative session."; and

(d) Section 713 is amended by adding the following provisions thereto: "When bills are presented to be considered under this section, a detailed statement of the reasons for the emergency and temporary modifications to existing laws shall be transmitted to each Councilmember before the legislative session at which the matter is considered.".

SEC. 3. This resolution shall take effect immediately, and apply to all matters scheduled for the legislative session following its adoption.

COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, D. C. 20004

RECORD OF OFFICIAL ACTION

Reference: PR 3-96 Resolution No. 3-346

Date of Consideration: 3-4-80

Motion Presented: To Adopt By: Dixon

☐ ROLL CALL VOTE — Result: _____ (__/__/__/__)

RECORD OF COUNCIL VOTE

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
DIXON					KANE					SHACKLETON				
WINTER					MASON					SPAULDING				
CLARKE					MOORE					WILSON				
HARDY					RAY									
JARVIS					ROLARK									

X—Indicates Vote A. B.—Absent N. V.—Not Voting

☒ VOICE VOTE — Result: Unanimous

Absent: Spaulding, Hardy, Ray and Shackleton

Recorded vote: _____
(on request)

CERTIFICATION OF RECORD

Secretary to the Council

3/12/80
Date

Mr. FAUNTROY. Thank you, Mr. Chairman, for the time that you have given us this afternoon and for the very enlightening testimony that you have provided.

Mr. DIXON. Mr. Chairman, let me finish by indicating to you that I know that the proponents of this legislation the Congress, House and Senate, are supporters and friends of the District. I have no question, obviously, with your involvement and Congressmen Dellums and McKinney. And on the other side, Senator Eagleton and others, Senator Mathias, I understand there is an effort to assist us.

I don't view it as an effort to restraint, but I am concerned that we be careful in moving in and setting precedents that maybe will be misunderstood or misused by others that might not be as supportive, particularly when I think the matter is one that is very simple and it is a review question and a question of trying to follow the intent rather than the letter of any restrictions that are placed on us.

Mr. FAUNTROY. Your concerns are very well taken.

Mr. DIXON. Thank you very much.

PREPARED STATEMENT OF CHAIRMAN ARRINGTON DIXON

Mr. DIXON. Good afternoon, Mr. Chairman, and members of the committee.

I am pleased to appear this afternoon, in response to your request, to comment upon proposed bills, H.R. 5927 and H.R. 5928, introduced by yourself, Mr. Chairman, and Chairman Dellums and Congressman McKinney.

These bills provide for the conditions under which the Council may enact emergency legislation and change the nature of congressional review of Permanent Council Acts.

As you know, the power of the Council to successively reenact identical emergencies has been challenged in the District of Columbia Courts in *Washington Home Ownership Council* v. *District of Columbia*. The Court of Appeals held an en banc hearing with respect to this matter on November 26, 1979. I know that you will appreciate my need to be circumspect in my comments today so, as not to prejudice our litigation position.

I believe that the Council of the District of Columbia has properly exercised its emergency powers, and that any adjustments to that authority are unwarranted at this time.

The true nature of the Council exercise of emergency legislative power, must be read in conjunction with the 30-day period of congressional review which is the subject of H.R. 5928.

The extended period of Congressional Review, has often required the Council to enact emergency legislation. The most dramatic example of this fact can be seen by reviewing the record associated with the Condominium Act of 1976, D.C. Law 1-89. Following transmittal to the House and Senate on September 15, 1976, the measure did not become law until March 25, 1977—A full 198 days later. Under such circumstances, there can be no question that emergency enactments of the permanent legislation is necessary.

RECOMMENDED LEGISLATION ON CONGRESSIONAL REVIEW

The most forthright manner in which to address this problem is through the elimination of the thirty-day period of congressional review. In this way, the Council could exercise its deliberate legislative processes, confident that once legislation was adopted after two readings and signed by the Mayor, it would become effective shortly thereafter. Extended periods of congressional review require that the Council enact emergency legislation to protect the public health, safety and welfare of District citizens.

The Council's exercise of its emergency power faithfully follows the carefully prescribed provisions in the Home Rule Act. Only if two-thirds of the members of the full Council vote to declare that emergency circumstances exist, does the Council then move to the consideration of the emergency measure which, if adopted, would become effective upon approval by the Mayor and remain in effect for no more than 90 days. As you know, Mr. Chairman, the ability to move

such a significant majority of the members of the Council to take such an action, with its far ranging political consequences, is a very serious undertaking.

The resolutions declaring that emergency circumstances exist are well documented, often presented on behalf of the executive branch of the Government or our independent agencies, and often by members. I should add that not even the litigants in the pending court of appeals case have challenged the adequacy of these legislative declarations of emergency circumstances, finding them to be well founded. In fact, we have had no complaints with respect to the actual process used to declare emergencies, which in my judgment supports the conclusion that no action by the Congress is needed.

AMENDMENT TO COUNCIL RULES

Parenthetically I might add, that I have introduced an amendment to the Council's rules which will strengthen the finding of fact requirements associated with emergency action, so that the members will have even more information at their disposal in making a judgment if an emergency exists.

Before closing, Mr. Chairman, let me turn briefly to the specific provisions of the two bills before the committee. While I do not believe that either bill should be enacted in their present form, I want to share with you several technical problems with the bills.

H.R. 5927

First, my observations with respect to H.R. 5927. On page 2 of the bill, the language "if such [emergency] act is for the same purpose and covers, in whole or in part, the same subject matter as any prior emergency act and is based on the same emergency as that on which such prior act was based" is used. My concern with these clauses is their ambiguity. Let us take the example of preservation of rental housing stock in the District of Columbia. At one point, the Council might believe it to be an emergency and in the public interest to limit conversations of certain rental units: In another, the Council might determine that automatic pass-through of certain utility bills, and not others, to be appropriate; and in a third circumstance, certain tax relief is deemed to be appropriate. All of these of course are for the "purpose" of preserving a rental housing supply, though they are different solutions to the same problem. Would these require enactment of amendments to the first emergency, or could they be considered as separate subjects? Could we circumvent the "same emergency basis" requirement by finding that a new set of facts, 2 months later have arisen, and that a brand new emergency could be enacted?

By brief example is not meant to be exhaustive, but reflects some of the problems of interpretation and definition which are likely to plague our activities should H.R. 5927 be enacted.

H.R. 5928

While the intent of H.R. 5928 appears to be that most Council Members would become effective without congressional review. I am not certain that the bill as drafted provided for such an interpretation. In addition, I am certain that the requirement of congressional review of acts "relating to crimes, criminal procedure, and prisoners" was meant to only include those codified in titles 22, 23, and 24 of the D.C. Code in accordance with the special provisions in the District charter affecting amendment of those titles.

In closing, Mr. Chairman, I appreciate the opportunity to have been able to testify today, and trust that my statement has been helpful. I am prepared to answer any questions that you and the other members of the committee might have.

Mr. FAUNTROY. Thank you.

Our next witnesses will come as a panel. From the Federal Home Loan Mortgage Corporation, Mr. William Nachbaur, who is the Deputy Counsel, and to him I have a great personal debt for the assistance they give me as a member of the Banking and Finance Committee.

He will be joined by Mr. James Murray of the Federal National Mortgage Corporation. Mr. Murray is Senior Vice President and General Counsel for the Federal National Mortgage Association.

He will be joined by Mr. James Murray of the Federal National Mortgage Corporation. Mr. Murray is Senior Vice President and General Counsel for the Federal National Mortgage Association.

Mr. Nachbaur, we are very happy to have you. You may proceed.

STATEMENT OF WILLIAM T. NACHBAUR, DEPUTY GENERAL COUNSEL, FEDERAL HOME LOAN MORTGAGE CORPORATION, ACCOMPANIED BY MARY BRUCE BATTE, VICE PRESIDENT, CONGRESSIONAL RELATIONS, AND JAMES E. MURRAY, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, FEDERAL NATIONAL MORTGAGE ASSOCIATION

Mr. NACHBAUR. Mr. Murray may be right outside the door, I am not sure.

Mr. FAUNTROY. We will pause for just a moment because we don't want him to miss your testimony either.

Mr. Nachbaur, why don't you proceed. Again, I want to thank you on behalf of the committee for coming to testify before us and thank you on behalf of myself for the staff support that your knowledge and position have provided members of the Banking and Currency Committee generally and this member in particular.

Mr. NACHBAUR. Thank you, Mr. Chairman.

With me at the table is Mary Bruce Batte who is our Vice President for Congressional Relations.

I understand that you are considering amending the District of Columbia Council's authority to pass emergency legislation and you wish to consider this in the context of the recent usury ceiling dilemma.

While the Corporation has no particular view regarding any modification of the Council's emergency authority, I will be glad to recount our actions of the past few weeks.

IMPACT OF INTEREST RATE CEILING APPROVAL

We appreciate the Congress swift actions to make the new 15-percent usury ceiling effective without the required 30-day delay. Your action enabled us to resume purchases of loans secured by District properties.

The speed with which Congress acted minimized the adverse effects on the supply of mortgage money to District home buyers. We worked closely with your staff in drafting H.R. 5811 and sent telegrams to all Members of the House urging their support of the bill.

SECONDARY MORTGAGE MARKET

Before discussing the events of the past few weeks, I would like to give you some background information on the secondary mortgage market and the effect of usury ceilings.

Each year, nationwide, nearly $200 billion in mortgage loans are made on single family homes. In the District of Columbia, nearly $900 million in home mortgages were originated last year by savings and loan associations alone. In addition, commercial banks and credit unions make loans in the District.

If financial institutions had to hold all the loans they make in their portfolios, the extent of their lending obviously would be limited by the amount of money they received, in savings deposits, loan repayments, and borrowings.

Fortunately, institutions have an additional source of funds. They can sell their loans in the secondary mortgage market and use the proceeds to make new loans. Last year, over $65 billion worth of mortgages were sold in the national secondary market.

Secondary market investors may purchase mortgage loans directly from originating lenders in the private secondary market or they may purchase mortgage-backed securities in the public secondary market.

The growth of the private market, and more significantly, the establishment of the public secondary market, has been accomplished by three congressionally chartered corporations, FNMA, GNMA, and the Mortgage Corporation.

In 1970, when Congress created the Mortgage Corporation, FNMA and GNMA had established a secondary market for FHA and VA mortgages. There was, however, no significant secondary market activity in conventional, non-government-insured loans. Each lender had its own forms and standards that varied widely.

When Congress chartered the Mortgage Corporation to develop a public secondary market for conventional loans and to enhance the existing but limited private secondary market for these loans, it also authorized FNMA to purchase conventional loans.

These three corporations, GNMA, FNMA, and the Mortgage Corporation, obtain funds for housing from many investors that are not normally home lenders. They also facilitate the movement of funds from areas with weak loan demand or effective usury ceilings to areas where demand is strong.

Together we purchased over $20 billion in mortgages during 1978. The Mortgage Corporation accounted for $7.5 billion of that. We resell the loans we purchase as passthrough securities.

Each week the Mortgage Corporation holds an auction in which lenders submit bids to sell their mortgages to us. Our purchase volume each week depends on the volume of bids received, the level of support needed by lenders, the economic outlook, and the volume of mortgages we believe we can sell in a reasonable period of time.

Since the Corporation has a limited capital base and does not receive operating funds from the Federal budget, we must balance our purchases of mortgages with our sales.

MORTGAGES FROM D.C. LENDERS

So far this year we have purchased $73 million in mortgages from the 14 District of Columbia lenders active in our programs. This compares with $66 million for all of 1978.

Since lenders in the District of Columbia can also originate loans on properties in Maryland and Virginia, these figures do not reflect the exact volume of mortgages we have purchased that are secured by properti in the District. but they are probably a close estimate. Lenders in aryland and Virginia, of course, can also lend on properties

In order to sell our mortgage passthrough securities, we must price them to compete favorably with many nonhousing alternative investments, such as corporate bonds. Because of current market conditions, the weighted average yield at our auction of last Friday was 12.693 percent. While this is down somewhat from recent weeks, it is still well above the 11-percent usury limit that would have applied in the District of Columbia if the emergency usury ceiling were struck down.

The yields we are requiring are not appreciably different from those required by other secondary market investors. Investors cannot afford to forego investments at today's high yields to invest in mortgages originated at below market rates. We would not be able to sell such loans.

USURY CEILINGS

Where usury ceilings preclude origination of mortgages at competitive rates, lenders are locked out of the secondary market. They cannot meet investor's yield demands without discounting the loans and incurring substantial losses.

This would be inconsistent with their responsibility to their depositors and shareholders.

Unfortunately, usury ceilings which are lower than realistic market rates are most damaging at points in the economic cycle when access to the secondary market is most needed by lenders.

When short-term rates in the capital markets are high, many savers withdraw their funds to make alternative investments. At such times, secondary market investors are a vital source of funds. But this source is not available if the lenders cannot make loans at competitive rates.

Normally, mortgage lenders severely affected by usury ceilings refrain from making loans in their own local markets and instead invest in securities or higher yielding mortgages in other parts of the country.

It is noteworthy that neither Maryland or Virginia have usury ceilings, so there is a readily available alternative market for the District of Columbia lenders when market rates exceed the usury ceiling.

Obviously, the transfer of local funds out of the District would damage not only its housing and construction activity but also other sectors of its economy.

All facets of the Nation's home lending delivery system have become closely tied to prevailing national market rates. Mortgage rates are set by competition among lenders all over the country. This competition holds local rates at levels consistent with national rates. This competition, therefore, provides the same protection to consumers that state usury ceilings were originally intended to provide.

The Corporation has taken an active role in supporting Federal preemption of State usury ceilings for all mortgages. As you know, the Depository Institutions Deregulation Act of 1979, which was passed by the Senate in November, contains such a preemption.

MORTGAGE CRISIS, NOVEMBER 1979

With this background, I will turn to the events of last month specifically our decision of November 6 to suspend purchases of mortgages closed on or after October 5th secured by properties in the District of Columbia if effective interest on the mortgages was over 11 percent.

Prior to FNMA's similar announcement, we had not analyzed the October 19th superior court decision in the Washington Home Ownership Council case concerning emergency condominium conversion legislation.

We generally rely on a warranty from the seller that a loan complies with local law. However, we cannot reasonably rely on such a warrantly if we know that there is a serious question of the validity of local law.

FNMA's decision reflected a reasonable interpretation of the implications of the condominium conversion decision, although we recognize there are factual distinctions between the condominium situation and the usury situation that might have lead a court to uphold the emergency usury legislation.

Once FNMA made its announcement, the chance that a borrower might sue was increased. This is a very important consideration for the corporation because of our need to sell virtually all of the mortgages we purchase. We would have to provide an opinion to our investors that there is no reasonable possibility that such a borrower's suit could be successfully prosecuted.

There is enough similarity between the use of the emergency authority in the condominium situation and its use in the usury situation that we could not give an unqualified opinion. Lenders wishing to sell to us could not warrant that the loans were clearly not usurious.

We, therefore, had no choice but to suspend purchase of District of Columbia loans. However, as I mentioned, we immediately contacted the chairman of this subcommittee, and Mayor Barry, and worked for the passage of H.R. 5811.

On November 22, as soon as President Carter signed H.R. 5811 into law—Public Law 96-124 approved November 20, 1979—and made the District of Columbia Council's permanent 15 percent ceiling effective, we resumed our activities in the District. We will allow lenders to fill their commitments by delivering District of Columbia loans that were made before we suspended purchases or during the time of the suspension, so long as they are under the 15 percent usury ceiling.

I will be happy to respond to any questions you may have.

Thank you.

[The prepared statement follows:]

PREPARED TESTIMONY OF WILLIAM T. NACHBAUR, DEPUTY GENERAL COUNSEL, FEDERAL HOME LOAN MORTGAGE CORPORATION

Mr. Chairman, members of the committee, I am William T. Nachbaur, Deputy General Counsel of the Federal Home Loan Mortgage Corporation. It is my understanding that you are considering several bills to amend the District of Columbia Council's authority to take emergency actions and that you wish to consider these bills in the context of the recent usury ceiling dilemma. While the corporation has no particular view regarding any modification of the Council's emergency authority, I will be glad to recount our actions of the past few weeks. We appreciate the Congress' swift actions to validate the Council's Act raising the usury ceiling on home loans to 15 percent. Your action enabled us to resume purchases of loans secured by District properties. The speed with which Congress reacted minimized the adverse effects on the supply of mortgage money to District homebuyers. We worked closely with your staff in drafting H.R. 5811 and sent telegrams to all members of the House urging their support for the bill.

BACKGROUND

Before discussing the events of the past few weeks, some background information on the secondary market and the effect of usury ceilings would be useful.

Each year, nearly $200 billion in mortgage loans are made on single family homes across the country. In the District of Columbia, nearly $900 million in home mortgages were originated last year by savings and loan associations alone.

If financial institutions had to hold all the loans they made in their portfolios, the extent of their lending obviously would be limited by the amount of savings deposits they attract, loan repayments they receive, and borrowings. Fortunately, institutions are not limited in this way, because they can sell their loans in what is known as the secondary mortgage market and use the proceeds to make new loans. Last year, over $65 billion worth of mortgages were sold in the national secondary market.

Secondary market purchasers include trust departments, diverse investors such as pension funds, insurance companies, as well as lending institutions such as savings and loan associations and banks. Investors may purchase mortgage loans directly from originating lenders in what is known as the private secondary market or they may purchase mortgage backed securities in the public secondary market.

SECONDARY MARKET CORPORATIONS

Over the last four decades, Congress has created three secondary market corporations, which in large part have been responsible for the growth of the private market, and more significantly, have established the public secondary market.

In 1938, Congress created the Federal National Mortgage Association as a secondary market entity within the government to purchase FHA and VA mortgages. In 1968, Congress split the original FNMA into two corporations. The Government National Mortgage Association was made a corporation within HUD to buy mortgages at below market interest rates and to guarantee mortgage-backed securities issued by lenders. FNMA became a private corporation to buy market rate FHA and VA mortgages.

The secondary market for FHA and VA mortgages was well established by these two corporations by 1970 when the Congress created the Federal Home Loan Mortgage Corporation. FHA and VA loans were originated on standardized forms. Their uniformity not only facilitated sales to FNMA and GNMA, but also facilitated sales among lenders.

There was, however, no significant secondary market activity in conventional loans at that time, and each lender had its own forms and standards that varied widely.

In 1970, Congress created the Mortgage Corporation to develop a public secondary market for such loans and to enhance the existing but limited private secondary market for conventional loans. At the same time, FNMA was also authorized to purchase conventional loans. The Federal Home Loan Mortgage Corporation was capitalized with $100 million from the Federal Home Loan Banks, which are its only shareholders. Our board of directors is composed of the members of the Federal Loan Bank Board, who are appointed by the President of the United States. No tax money is used in our operations.

These three corporations—GNMA, FNMA, and the Mortgage Corporation—obtain funds for housing from investors that are not normally home lenders. They also provide a means of transferring funds from areas of the country which have excess funds or unrealistic usury ceilings to lend to regions where loan demand exceeds local deposits. The three corporations purchased over $20 billion in mortgages during 1978. The Mortgage Corporation accounted for $7.5 billion of those purchases.

MORTGAGES IN DISTRICT OF COLUMBIA

So far this year, we have purchased $73 million in mortgages from the 14 District of Columbia lenders active in our programs (12 savings and loan associations, one commercial bank, and one credit union). This compares with $66 million for 1978.

Since lenders in D.C. can also originate loans on properties in Maryland and Virginia, these figures do not reflect the exact volume of mortgages we've purchased that are secured by properties in the District, but they are probably a close estimate. Lenders in Maryland and Virginia, of course, can also lend on properties in the District.

Each week, the Mortgage Corporation holds an auction in which lenders submit bids to sell their mortgages to us. We determine the volume which we will buy each week based on the volume of bids received, the level of support needed by lenders, and the economic outlook. The amount we purchase is also governed by the volume of mortgages we believe we can sell in a reasonable period of time. Since the Corporation has a limited capital base and does not receive operating funds from the Federal budget, we must balance our purchases of mortgages with our sales.

Since its founding, the Corporation has purchased over $20 billion worth of mortgages and resold most of them to investors in the form of pass-through securities. Our basic securities are called Participation Certificates and Guaranteed Mortgage Certificates.

In order to sell our securities, we must price them to compete favorably with many non-housing alternative investments, such as corporate bonds. You are well aware of what has happened recently in the capital markets. Because of current market conditions, the weighted average yield at our auction of last Friday was 12.693 percent.

The yields we are requiring are not appreciably different from those required by other secondary market investors. Investors cannot afford to forego investments at today's high yields to invest in mortgages originated at below market rates.

INTEREST RATES

Where usury ceilings preclude origination of mortgages at competitive rates, lenders are locked out of the secondary market. They cannot meet investors' yield demands without discounting the loans. This could create substantial losses for lenders and conflict with the institutions' fiduciary responsibilities to their depositors and shareholders.

Unfortunately, usury ceilings which are lower than realistic market rates are most damaging at points in the economic cycle when access to the secondary market is most needed by lenders. When short-term rates in the capital markets rise, as they have been doing for some time, many savers withdraw their funds from lending institutions to invest in capital markets. At such times, secondary market investors are a vital source of liquidity to lenders who want to continue serving homebuyers' needs. But only if the lenders can originate at competitive rates, can they sell their loans to us or other secondary market investors.

According to the United States League of Savings Associations, S&Ls in at least 24 states are restricted to rates of 13 percent or less by current usury ceilings. (A list of these states is attached.) Lenders in those states cannot effectively use the secondary market, and as a result, home lending has slowed to a virtual standstill.

Even when lenders do experience savings inflows, the high cost of savings deposits in times of tight credit makes it impractical for them to make mortgage loans at rates far below those prevailing in most areas of the country. Since June 1978, this cost has increased dramatically. Since that time, Money Market Certificates (MMCs) have been used extensively to sustain savings inflows to thrift institutions in the face of sharply rising interest rates in competing short-term debt markets. Maximum rates permitted to be offered on MMCs are tied to the weekly auction rate on six-month U.S. Treasury bills. Thrift institutions using MMCs to attract funds for mortgage lending now have to pay rates in excess of 12 percent for these funds. As a result, their overall cost of funds is such that lenders are reluctant to make loans at below market rates.

Normally, mortgage lenders severely affected by usury ceilings refrain from making loans in their own local markets, and instead, invest in securities or higher yielding mortgages from other parts of the country to the extent permissible under federal and state regulations. In effect, then, funds generated from savers within the state are made available to borrowers outside state boundaries. Obviously, the transfer of local funds out of state will do damage not only to housing and construction activity in the state, but also to other sectors of the state's economy, or in his case the District.

As you can see from the above discussion, all facets of the nation's home lending delivery system have become closely tied to prvailing markt rates across the country. The activities of the Mortgage Corporation and others have produced a truly national market. In today's national market, competition among lenders will hold rates at levels consistent with rates generally prevailing across the country. This competition provides the same protection to consumers that state usury ceilings were originally intended to give. This has been demonstrated in several states where usury ceilings have been removed. Maryland and Virginia are two prime examples near at hand.

The Corporation has taken an active role in supporting federal preemption of state usury ceilings for all mortgages. As you know, the Depository Institutions Deregulation Act of 1979, which was passed by the Senate earlier this month, contains such a preemption.

MORTGAGE CRISIS IN THE DISTRICT

With this background, I will now turn to the events of last month. Your staff asked that I go into some detail about the decision we made to suspend purchases of mortgages secured by properties in the District of Columbia if effective interest on the mortgages exceeds 11 percent and the mortgages were closed on October 5th or later. Prior to FNMA's announcement, we had not analyzed the October 19th District of Columbia Superior Court decision in the case of *The Washington Home Ownership Council, Inc.* v. *District of Columbia,* concerning emergency condominium conversion legislation.

FNMA's decision reflects a reasonable interpretation of the consequences of the condominium conversion decision, although there are factual distinctions between the condominium situation and the usury situation that could lead a court to uphold the emergency usury legislation. Once FNMA made its announcement, the chance that a borrower might sue was increased. This is a very important consideration for the corporation because of our need to sell virtually all of the mortgages we purchase. We would have to provide an opinion to our investors that there is no reasonable possibility that such a borrower's suit could be successfully prosecuted. There is enough similarity between the use of the emergency authority in the condominium situation and its use in the usury situation that we cannot give an unqualified opinion. Lenders wishing to sell to us therefore could not warrant that the loans were clearly not usurious. We therefore had no choice but to suspend purchase of D.C. loans.

At the time we suspended purchases of D.C. loans, the 14 D.C. lenders participating in our programs held outstanding commitments to deliver $25 million worth of mortgages to us. When we accept an offer to sell us mortgages, we do not know where the mortgaged properties will be located. The offer is simply for a certain dollar amount and yield. The lender can include loans from various jurisdictions. In the case of the $26 million, we considered it likely that lenders planned to meet a significant portion of their commitments with D.C. loans. Naturally, the lenders who were holding them were concerned about our actions because of the effect upon their financial planning and liquidity. We were also concerned because we wanted to continue to support home lending in the District. We worked closely with Congress to remedy the problem.

On November 22, as soon as President Carter signed H.R. 5811 into law and made the D.C. Council's permanent 15-percent ceiling effective, we resumed our activities in the District. We will allow lenders to fill their commitments by delivering D.C. loans that were made before we suspended purchases or during the time of the suspension, so long as they are under the 15 percent usury ceiling.

I will be happy to respond to any questions you may have.

STATES WITH USURY CEILINGS BELOW 13 PERCENT AFFECTING SAVINGS AND LOAN ASSOCIATIONS [1]

Arizona, Arkansas, District of Columbia, Hawaii, Idaho, Kansas, Mississippi, Louisiana, Nebraska, New Jersey, New Mexico, North Dakota, Oregon, South Dakota, Washington, Wisconsin, Georgia, Illinois, Iowa, Minnesota, Missouri, New York, Pennsylvania, Texas, and Vermont.

Mr. FAUNTROY. Thank you.

[1] Source: U.S. League of Savings Association.

First of all, Mr. Nachbaur, as you have no doubt heard either in the context of these hearings or prior to this time, there are many persons who feel that you acted in a precipitous manner in choosing to follow the example or follow the lead of FNMA in this regard.

What is your response to that specific charge?

Mr. NACHBAUR. Well, I don't think that we did. We looked at the case. We didn't feel that we could assure our investors that the emergency usury law would not be struck down. We were risking not only the losing of the interest on all loans purchased in the District after October 5 over 11 percent, but also our reputation with investors.

So it had a lot broader impact even than the possible lost interest which, of course, would have meant a loss to the investors who bought our participation certificates that included those mortgages.

Mr. FAUNTROY. What impact did you anticipate at the time that your actions would have on the real estate industry and savings and loan industry in the District of Columbia?

Mr. NACHBAUR. Well, I think we certainly realized that it had an adverse impact on lenders and on the real estate industry. There were contracts to deliver loans that were pending in our regional office. After we made the decision, we tried to accommodate the lenders, said they could fill the commitment with loans from Maryland or Virginia if they had them, or if they didn't, that we would not hold them to the commitment.

Mr. FAUNTROY. Have you had to do this in other situations around the country?

Mr. NACHBAUR. Well, this particular situation has not come up. We have stopped purchases in other States for different reasons, but not because of the uncertainty of the validity of the law.

There are certainly many States where the usury ceilings are below the market rate and lenders know that they cannot originate loans so they are not trying to sell them to us.

There are other States where provisions we believe are important to have in our mortgages have been restricted by State legislation and we have refused to purchase mortgages. I think this is the only example of where a piece of State legislation that people were relying on was called into question.

Mr. FAUNTROY. What would be the effect on private lending institutions, that is, thrift institutions, S&L's, and mortgage lending institutions if there were no secondary mortgage money market provided by you?

Mr. NACHBAUR. Well, there are 14 lenders in the District that sell to us on a regular basis. It would have certainly a dramatic impact on the way they operate.

Mr. FAUNTROY. Could they survive?

Mr. NACHBAUR. Well, they would have to change their method of operation. As I pointed out in the testimony, we have established another source of funds in addition to deposits and there are not very many deposits coming in these days.

We provide another outlet by purchasing mortgages and then the lenders can take the proceeds of the sale and make more mortgages. There is, as I mentioned, a private secondary market so if we did not

exist, say, Perpetual could sell to a lender in New England that didn't have an alternative outlet for its funds or something like that. But it would have a dramatic impact if there were no secondary market.

Is that responsive to your question?

Mr. FAUNTROY. Yes.

LOANS IN THE DISTRICT OF COLUMBIA

What parcentage of the loans made in the District of Columbia became a part of the portfolio? Do you know?

Mr. NACHBAUR. I think you mean the Mortgage Corp. I think Mary Bruce has the number.

Ms. BATTE. $900 million worth was originated last year and we bought $63 million worth, and this year we bought $77 million worth.

Mr. FAUNTROY. That is the Mortgage Corp. I will get to FNMA in a minute.

Ms. BATTE. Right. So it is a substantial chunk of money involved.

Mr. FAUNTROY. I did notice on page 6 of your statement something dealing with the Federal override which we referenced in discussions this morning with the Mayor. I want you to know that I have supported overrides in other legislation. I should indicate that I will do that again on the financial institutions act since there would be adequate protection in market competition.

Mr. NACHBAUR. Well, I think the fact that both Maryland and Virginia have eliminated their ceilings certainly lends support to that. If you were to compare the interest rates in Maryland and Virginia to those in the District last summer when there was no ceiling in the District, you would probably find that they were all within a very narrow range which I think supports our argument that competition really takes care of what usury is intended to accomplish.

Mr. FAUNTROY. I wonder if you would finally comment on the impact of emergency legislation problems in the District as it relates to the investment climate generally?

Mr. NACHBAUR. Well, it certainly created an uncertainty in the usury area. I don't have any personal knowledge of what other legislation is out there that was enacted on on an emergency basis that would affect the investment climate.

Mr. FAUNTROY. This has not affected your thinking as a corporation about the future investments in the District?

Mr. NACHBAUR. No.

Mr. FAUNTROY. Thank you.

Does counsel have additional questions?

I would like you to remain, Mr. Nachbaur, for Mr. Murray's testimony because there may be some additional questions suggested by his testimony.

Mr. Murray, we are very happy to have you. You may proceed as you like in testifying before us.

STATEMENT OF JAMES E. MURRAY, ESQ.

Mr. MURRAY. Good afternoon.

Mr. Chairman, may name is James E. Murray. I am senior vice president and general counsel of the Federal National Mortgage Association, FNMA.

I am here today at the subcommittee's request to set forth the basis of FNMA's notice to mortgage lenders on November 2 that it would no longer purchase conventionally financed home loans closed after October 5 if the loans were at an interest rate in excess of 11 percent.

Our position was based on a ruling by the District of Columbia Superior Court on October 19 that, in our judgment, called into question the validity of Emergency Act 3–79, which was enacted into law by the District of Columbia City Council on October 5.

H.R. 5811

As we all know now, the legal uncertainty that was created by this decision was removed on November 20 when President Carter signed the legislation, H.R. 5811, waiving the usual congressional review period required for legislation passed by the District of Columbia Council, thus permitting the Interest Rate Modification Act of 1979, Act No. 3–119, which is permanent legislation to take effect immediately.

I would add that the Federal National Mortgage Association immediately resumed doing business at this time in the District.

BACKGROUND OF FNMA

Before discussing some of the legal considerations involving our decision, I think it might be well to briefly state what FNMA is and how it operates.

FNMA is a federally chartered, privately owned, managed and financed company. We are subject to certain Federal regulations and, of course, to congressional oversight. We pay full Federal corporate income tax.

FNMA operates nationwide. The corporation does not originate mortgage loans. Rather, it buys home mortgages pursuant to forward commitments, generally good for a 4-month period, issued to mortgage bankers, commercial banks, and other originating lenders. These lenders have been approved on the basis of financial capacity and ability to make and service mortgages.

Based on FNMA's commitments, lenders will, in turn, commit themselves to homebuilders, real estate agents, or to prospective home buyers to make mortgage loans. FNMA, under its commitment procedure, is legally obligated to buy those mortgages delivered by the lenders against outstanding commitments, provided those mortgages meet our requirements.

Our operations are not financed, directly or indirectly, by the Federal Government but by funds raised in the Nation's money and capital markets.

Over the last several months, as home-mortgage interest rates have risen, originating lenders have had to consider more carefully the legal effect, if any, of State and local usury laws on the residential loans they were making.

Because many of these laws set interest rate ceilings below today's market rates, there is currently little or no conventional lending in a substantial number of jurisdictions.

Thus, while not trying at all to minimize the problem that existed in the District after the October 19 court decision, the problem here was not unique. In fact, the problem is so prevalent that the Congress has been actively considering legislation to preempt State usury laws, not only for Government-backed residential mortgages, such as those insured by the Federal Housing Administration or guaranteed by the Veterans' Administration, but conventionally financed residential loans as well.

We presently have a problem in 24 States where the usury ceilings are below the market rate.

Maintaining a nationwide secondary market in home loans, FNMA has found it necessary in this high mortgage interest rate environment to monitor much more closely the usury statutes in the various jurisdictions and how they may affect the validity of the mortgages we buy.

Thus, in the case of the District of Columbia, we were aware of the enactment on July 10, 1979 of the Interest Rate Modification Emergency Act of 1979 (EA 3–52). This resolution, effective for a 90-day period expiring on October 9, 1979, eliminated interest rate ceilings on mortgage loans.

We were also aware of the enactment on October 5, 1979 of the Interest Rate Modification Second Emergency Act of 1979 (EA 3–79). This resolution, effective for a 90-day period until January 3, 1980, set the residential mortgage interest rate at 15 percent.

WASHINGTON HOME OWNERSHIP COUNCIL *v.* DISTRICT OF COLUMBIA ET AL

On October 19, 1979, the Superior Court of the District of Columbia handed down its decision in *The Washington Home Ownership Council* v. *District of Columbia et al.* (Civil Action No. 10624–79), hereinafter referred to as WHOC.

This case involved an application for a declaratory judgment that certain emergency acts of the District of Columbia Council relating to the sale, acquisition, and development of real estate for cooperative or condominium ownership in the District were unlawfully enacted.

In particular, the court was asked to decide whether the District of Columbia Self-Government and Reorganization Act, the Home Rule Act, permits the Council to successively enact the same or similar emergency legislation. In reaching its decision, the court noted that:

> When the legislative history of the Home Rule Act and the 1978 amendments thereto is considered, the only natural and logical conclusion that can be reached is that the Congress did not confer upon the Council the power to enact emergency legislation of indefinite duration through repeated use of the emergency power.

The court then concluded and held that

> The successive enactment of substantially the same substantive provisions of law through the emergency power, maintaining such provisions in effect for more than 90 days without a second reading or submission for congressional review is, with respect to the statues at issue before the court, unlawful.

COUNCIL'S EMERGENCY INTEREST RATE ACTS

The validity of the Interest Rate Modification Second Emergency Act of 1979—EA 3–79—was not before the court in the *WHOC* case. The basic legal principle in the *WHOC* case, however, and in the present usury matter is substantially the same.

Similar to the legislation challenged in the *WHOC* case, the October 5 resolution of the City Council—EA 3–79—setting the usury rate at 15 percent was emergency legislation, succeeding a prior emergency measure—EA 3–52—on the same subject without there being an intervening new emergency.

I believe, therefore, that the holding in the *WHOC* case casts serious doubt on the legality of the present District of Columbia usury statute which was in effect before the permanent legislation.

It has always been FNMA's position that it would not knowingly purchase a mortgage loan that has been made in violation of a State or local usury law. There also are severe consequences imposed on a lender or an investor for a violation of the District of Columbia usury law.

FNMA, therefore, concluded that it would not be prudent to continue the purchase of conventional mortgages in the District where the interest rate on such mortgages is in excess of 11 percent.

FNMA certainly regretted taking the action it did. However, pending a final decision in the *WHOC* case or permanent legislation resolving the District of Columbia interest rate problem, as a matter of prudent legal judgment, FNMA could have taken no other action than that which it did take.

I have thus far, in my testimony, responded to the first and third questions set forth in the chairman's November 26 letter.

FNMA MORTGAGES IN THE DISTRICT

In response to the second question, as of September 30, 1979, FNMA had in its portfolio 7,017 home mortgages having an unpaid principal balance of $179.9 million. In the first 9 months of this year, we purchased 453 home mortgages totalling $22 million in D.C.

I would emphasize those are purchases in the District of Columbia.

With regard to commitments issued to District of Columbia lenders, we have issued about $215 million. Those are commitments to purchase, but those mortgages have not actually come into the portfolio of the Corporation and those commitments are outstanding.

I will be pleased to answer any questions that you may have, Mr. Chairman.

Mr. FAUNTROY. Thank you, Mr. Murray.

Of course, as we questioned Mr. Nachbaur, and as we have mentioned before, there are those who felt that your action was precipitous in response to the court case. To paraphrase the song that was current in my youth, you were just passing by but you started something and I may never know why but you started something. A new crisis was in the making.

Mr. MURRAY. Mr. Chairman, we certainly did not realize what a thunderstorm we were going to cause in the District I didn't realize

we would be on the front page of the Washington Post on Monday morning.

Although looking back in retrospect, there were a number of problems that we had.

IMPACT OF COURT DECISION

One: As I mentioned, we were issuing commitments to purchase in excess of lending. So there were lenders out there making return commitments to home owners and builders and we felt we had to move immediately to make clear our position so there would not be other third parties who would be harmed.

So it could be—I don't disagree that it could be argued that we moved too quickly, but we felt under the circumstances we had to take an action. You take your lumps. I don't know if that is a song, but I have certainly taken mine.

Mr. FAUNTROY. Well, again, I take it you have had experience or have had to take similar steps in other situations.

Mr. MURRAY. Yes. If it is any consolation, Mr. Chairman, as far as the District is concerned, we have done this in other jurisdictions. It is always a painful process. There are several problems associated with it.

Part of it is because of the severity of the consequences of a violation of a usury law. In many States it means loss of all interest. In some States it means loss of all principal. In the State of Texas, until recently it was a felony and you went to jail for 1 year. So we view these as being very serious problems with usury.

This first became a problem for FNMA in 1969–70, in that credit crunch period. Gradually, the States began to realize in many ways the counter-productive effect of usury laws and began to change them. The same situation occurred in 1973–74, and again States began to change.

Unfortunately, with the high inflationary economy we have had, and with the interest rates each time plateauing at a higher level, the usury laws could not stay ahead of it.

So in examples, as I mentioned, in the State of Texas it is a felony to violate the usury law. But in the State of Texas there is a FHA exemption. The attorney general there announced that was unconstitutional.

So we had to announce in Texas that we could not make loans in excess of the interest rate of 10 percent. It caused a flurry in Texas and Governor Clemmons accused us of conspiracy. There was an antitrust investigation and the State legislature finally changed the usury law. But we took a lot of turmoil over it.

In the State of Colorado you have the problem of the Uniform Consumer Credit Code, the UCCC. That code was drafted back 15 years ago and it was to take care of basically small loans, but a provision was put in the act that applies to real estate loans.

The idea back in those days was that no one would make a real estate loan at more than 11 percent. When the real estate interest rates went up to 11, 12, and 13, lenders had to be printed and have their pictures taken and licensed as lenders. There were penalties involved if loans were made in excess.

We had to announce that unless our lenders were licensed, they could not do business in those States. It is unfortunate that this occurred but,

again, we have to obey the State law. We are not going to disregard the State law and the District fell into this pattern.

We keep monitoring what is happening in the States so that we are not in violation of the State law and the District fell into this pattern.

Mr. FAUNTROY. All right.

Let's assume that the 15-percent limitation now in effect pursuant to the permanent legislation becomes inadequate in the District of Columbia. What would you do this time different from the way in which you responded last?

Mr. MURRAY. I think the big difference in the way it happened before, Mr. Chairman, was that there were other lenders who believed they could continue to go on lending. It was a question of legality. If the rates get above 15 percent again, we will have to announce that we will not purchase any mortgages in the District in excess of 15 percent. That is the law.

That would mean the lenders who are competing for our commitments in the District would not be able to get commitments from us.

Mr. FAUNTROY. So you would lead the way again.

Mr. MURRAY. It would be a question of leading. Everybody would leave, Mr. Chairman. In that situation we would all be together in leaving the District. Nobody likes to be up front.

Mr. FAUNTROY. I asked Mr. Nachbauer a question he anticipated. He said when you went, there was not much choice.

Mr. MURRAY. It is nice to be respected, Mr. Chairman, but I think every lender had to make his own decision on it. There certainly was a serious question.

Mr. NACHBAUER. I think I might clarify what I said more along the lines that FNMA's action caused us to take a closer look at the case.

Mr. FAUNTROY. I suspect what I am grappling for is probably impossible. There is no way to "grandfather" anyone in this situation. There is no way to avoid your statement's taking effect immediately. Is that the case?

Mr. MURRAY. Yes, Mr. Chairman, that is difficult because regardless of if we made it effective saying we will continue to service loans up until October 1 but not beyond that—a lot of the people who criticize us, consumer advocate-type lawyers, would be the first ones to bring class actions against us for violating the D.C. usury law.

Also a factor here, Mr. Chairman, this is not a theoretical problem. It is a very practical one for all lenders.

Mr. NACHBAUER. The big difference is that the 15-percent ceiling now is permanent legislation. This case has no bearing on that if rates were to go to 15 percent or 16 percent and the Council started overriding it with emergency legislation.

Mr. MURRAY. The first emergency would be all right, 90 days, but once they began extending the emergency——

Mr. FAUNTROY. Then you would be in the same position.

Mr. MURRAY. Yes.

Mr. FAUNTROY If you could announce as soon as this 90-day period is over.

Mr. MURRAY. That is right, but I guess every dog is entitled to his first bite, every legislature is entitled—I think that is a rule of law, r. Chairman. You have to keep your dog restrained after he bites r neighbor the first time.

RECOMMENDED USURY LAW CHANGE

Mr. FAUNTROY. I do want to put to you the same question I put to Mr. Nachbauer because I am concerned about the investment climate as it relates to the cost of doing business that has developed as a result of actions like this.

I wonder what we can do, in your judgment to eliminating the uncertainty that we had in the process heretofore.

Mr. MURRAY. Mr. Chairman, with regard to the usury law, I really believe that the most effective way in light of economic conditions in this country, unless we get back to 1 or 2 percent inflation, is to eliminate the usury law because our mortgage markets which are tied directly into the money markets—that is the thing that has happened because of FNMA and FHLMC. We provide direct access into the capital markets for the home mortgage market. That means as interest rates on those money markets continue to escalate, the home mortgage market will be drawn right with it.

I don't see that the usury laws have the effect that they were intended to have 100 years ago when most of them were enacted. I think that would be the most effective way.

With regard to the investment climate in the District of Columbia, we believe it is a good investment climate. We certainly want to do as much business in the District of Columbia as we can. We have $200 million in commitments outstanding in the District of Columbia which is a much greater amount than we had in the past.

So with regard to the climate in the District of Columbia we think it is a good climate for investment. This was just an unfortunate incident that happened because of that particular case.

Mr. FAUNTROY. Mr. Murray, the Mayor was here testifying earlier this morning.

Mr. MURRAY. I heard him over in the Senate.

Mr. FAUNTROY. You do know that he suggested that you cut off in response to something you read in the newspaper about Judge Robinson's decision. I just would like to know whether FNMA conducted their own detailed account of the decision?

Mr. MURRAY. Yes, Mr. Chairman. What happened was that, again, living in the District—actually, this was handled out of our Philadelphia office—we all were aware of the case when it was decided. Immediately on hearing of the case we sent for copies of the option.

Philadelphia read it and sent it to our office. We read it and we couldn't in the light of that decision, do anything other than what we did we felt because not only had there been—the suit was against not only the nine successive emergencies but that there had been more than one, and the emergency for the first time was also declared invalid. I think that has been lost in the controversy.

So the judge ruled much more closely on the point of the D.C. usury law. Counsel argued with me that there had been many more than one and perhaps they were entitled to two because they couldn't effectively enact emergency legislation without having at least two. That was not the court's rule so that we felt was still a serious problem.

Mr. FAUNTROY. Thank you so much.

Mr. Nachbauer, is there anything you want to add to any aspect of the questions we have asked?

Mr. NACHBAUER. No, Mr. Chairman.

Mr. FAUNTROY. I want to thank both of you for coming.

Does counsel have any questions?

Mr. LEE. What about the securities that you offer? Are they identified so the persons know what mortgages are behind those securities?

Mr. MURRAY. With regard to FNMA, we do not issue those as such. FNMA is in effect a kind of converter. We convert home mortgages into liquid paper. We don't identify any of our obligations, whether they are debentures or whatever. That is not the case with the mortgage corporation.

Mr. NACHBAUER. Our offering circular that goes out with our certificates indicates that the mortgages come from anywhere, so the investor doesn't know.

Mr. LEE. The reason I raise that question is that it relates to the investment climate as for assurance the mortgages that would be issued would continue to be salable in the secondary market. We need some assurance that the results of the uncertainty which rose out of the legislative process would not adversely impact future sales.

Mr. NACHBAUER. I think what you are saying is that the uncertainty would affect all our participation certificates.

Mr. LEE. Is this going to taint local mortgages in the future?

Mr. NACHBAUER. I think the legislation just enacted eliminates that as far as the present situation.

Mr. FAUNTROY. Thank you, ladies and gentlemen. That concludes the hearing.

[Whereupon, at 2:35 p.m., the subcommittee was adjourned.]

APPENDIX A

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

(C.A. No. 10624–79)

THE WASHINGTON HOME OWNERSHIP COUNCIL, INC., PLAINTIFF

v.

DISTRICT OF COLUMBIA, DEFENDANT

METROPOLITAN WASHINGTON PLANNING AND HOUSING ASSOCIATION, INC., ET AL. INTERVENOR-DEFENDANTS

OPINION AND ORDER

OCTOBER 9, 1979

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

In this action, plaintiff Washington Home Ownership Council, Inc. ("WHOC") seeks a declaratory judgment that certain "emergency" acts of the council of the District of Columbia relating to the sale, acquisition and development of real estate for cooperative or condominium ownership were unlawfully enacted. Plaintiff also seeks to enjoin enforcement of any such act unlawfully enacted which has not been superseded by permanent legislation. The matter is before the Court on the parties' cross motions for summary judgment.

I. BACKGROUND

Article 1, Section 8, clause 17 of the United States Constitution vests legislative authority over the District of Columbia in the United States Congress. Congress may, however, delegate any or all of its legislative responsibility over the District's local affairs to a local legislative body in the District, so long as Congress retains the power to revise, alter and revoke acts of the local government. *District of Columbia* v. *John R. Thompson Company, Inc.*, 346 U.S. 100 (1953).

Over the years, Congress has instituted various forms of local government in the District. Local government in the District is currently authorized by the "District of Columbia Self-Government and Government Reorganization Act," P.L. 93–198, 1 D.C. Code §§ 121 *et seq*, as amended (Supp. VI, 1979) (the "Home Rule Act").

The delegation of legislative power by the Congress to the Council of the District of Columbia ("the Council") provided for in the Home Rule Act is subject to certain limitations of a procedural nature, which are intended to provide for both citizen input into the legislative process (Section 412(a), 1 D.C. Code §146(a)), and for Congressional review of Council Acts prior to their becoming law (Section 602, 1 D.C. Code § 147(c)(1)). An exception to these procedural limitations is provided in Section 412(a) of the Home Rule Act, 1 D.C. Code §146(a), for "emergency" legislation:

> If the Council determines, by a vote of two thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days.

Thus, the Council is empowered to enact both "permanent" legislation (that which has passed through two readings and Congressional review) and "emergency" legislation (effective immediately but for no more than ninety days).

In this action, plaintiff WHOC alleges that successive enactment by the Council of numerous "emergency" acts dealing with ownership and development of condominium and cooperative properties in the District is in violation of the Home Rule Act. Defendant District of Columbia and the Intervenor-defendants vigorously contest this allegation. Only the procedure by which those acts were enacted is at issue in this litigation; the legality or constitutionality of the substantive provisions of those "emergency" acts is not before the Court.[1]

II. FACTS

In the three counts of its Complaint, plaintiff challenges the validity of three separate groups of "emergency" acts, as follows:

A: *Count One:*

1. *Emergency Condominium and Cooperative Stabilization Act of 1979*, D.C. Act 3-44, approved May 29, 1979.

Accompanied by *Resolution 3-126*, May 22, 1979, setting forth the circumstances deemed by the council to constitute an emergency, this act imposed a 90 day moratorium on condominium and cooperative conversions, and established the Emergency Condominium and Cooperative Conversion Commission to study the subject and recommend permanent legislation thereon.

2. *Emergency Condominium and Cooperative Conversion Stabilization Act of 1979*, D.C. Act 3-95, approved August 27, 1979.

Accompanied by *Resolution 3-201*, July 31, 1979, which is identical to Resolution 3-126, *supra*, with only minor statistical additions. Both resolutions recite that:

> [t]he preservation of the public peace, health safety and general welfare necessitates an emergency act to impose temporary controls on the conversion of rental properties to condominium or cooperative status and thus to stabilize rental housing in the District of Columbia.

B. *Count Two:*

Following enactment of two "emergency" moratorium acts,[2] the Council enacted (after two readings) and transmitted to Congress the *Cooperative Conversion Moratorium Act*, D.C. Law 1-71, 29 D.C. Code §801 (Supp. V 1978). It became law on June 19, 1976, at the expiration of the 30 day Congressional review period, no concurrent resolution of disapproval having been passed in Congress. That law provided for 180 day moratorium on cooperative conversions, expiring on November 3, 1976. The report of the Council's Committee on Housing and Urban Development which accompanied the bill that became D.C. Law 1-71 stated that the 180 day moratorium was needed to allow the Council time to "construct and offer permanent legislation which will serve to govern the establishment and conduct of cooperative housing accommodations in the District."

Following the expiration of the 180 day moratorium, ten successive emergency acts were passed by the Council and approved by the Mayor, with the effect of continuing the moratorium in force. These acts were:

1. *Emergency Cooperative Regulation Act of 1976*, D.C. Act 1-189, approved January 3, 1977.

Accompanied by *Resolution 1-434* December 7, 1976. which finds emergency circumstances in the fact that the Congressionally approved 180 day moratorium would expire before the Council could enact "comprehensive legislation" due to the Council's "legislative Schedule", and that "chaos . . . in the housing market" would result from termination of the moratorium prior to enactment of comprehensive legislation.

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[1] Plaintiff WHOC is a District of Columbia not-for-profit corporation, composed of member companies and individuals engaged in ownership, brokerage, development and/or management of real estate in the District, including condominium and cooperative housing. Intervenor defendants are the Metropolitan Washington Planning and Housing Association, Inc., a not-for-profit corporation involved in representing and assisting low and moderate income families in need of housing in the District, and the following tenant organizations: Towne Towers/Aristocrat Tenants Association, Dorchester Tenants Association, Mintwood Tenants Association, Park Regent Tenants Association, Covington Tenants Association and Arundel Association.

[2] The *Emergency Cooperative Conversion Act*, D.C. Act 1-90, approved Feb. 6, 1976, and the *Second Emergency Cooperative Conversion Moratorium Act of 1976*, D.C. 1-112, approved May 6, 1976.

2. *Emergency Cooperative Regulation Act of 1977*, D.C. Act 2–13, approved March 18, 1977.

Accompanied by *Resolution 2–38*, March 8, 1977, this Act follows the language of the first emergency moratorium (D.C. Act 1–189, *supra*), and is based on the same emergency circumstances.

3. *Second Emergency Cooperative Regulation Act of* 1977, D.C. Act 2–47, approved June 17, 1977.

Accompanied by *Resolution 2–100*, June 14, 1977, both the act and resolution are the same as their predecessors, except that the act adds provisions for housing and relocation assistance to persons displaced by conversions occurring within the limited exceptions to the moratorium.

4. *Third Emergency Cooperative Regulation Act of 1977.*

Accompanied by *Resolution 2–165*, September 13, 1977, this act and its resolution are identical in provisions and reasons therefor to the act and resolution immediately preceding them (D.C. 2–47 and Resolution 2–100, *supra.*)

On December 6, 1977, the Council enacted the *First Emergency Cooperative Conversion Regulation Act of 1978*, D.C. Act 2–70, following adoption of Resoution 2–224. The provisions of that Act were substantially the same as D.C. Act 2–88, *supra*, as was the accompanying Resolution 2–224. On January 29, 1978, the Mayor disapproved D.C. Act 2–70, due to numerous technical deficiencies in the language of the Act (and in the language of the similarly worded "permanent" legislation then pending on the same subject). In his statement of reasons, the Mayor stated that his action would not adversely affect tenants in the District.

5. *Second Emergency Cooperative Regulation Act of 1978*, D.C. Act 2–171, approved April 3, 1978.

Accompanied by *Resolution 2–258*, February 21, 1978, which notes that the Mayor's disapproval of D.C. Act 2–70, *supra*, has left a gap in regulation of cooperative conversions, resulting in an emergency because a continued moratorium is needed to prevent chaos, the act is a reworded version of D.C. Act 2–88, *supra.*

6. *Third Emergency Cooperative Regulation Act of 1978*, D.C. Act 2–239, approved July 7, 1978.

Accompanied by *Resolution 2–389*, which recites that comprehensive legislation is under consideration in committee and scheduled for public hearings, and that moratorium must continue to avoid chaos, the act is identical to D.C. Act 2–171, *supra.*

7. *Fourth Emergency Cooperative Regulation Act of 1978*, D.C. Act 2–290, approved October 25, 1978.

Accompanied by *Resolution 2–447*, October 3, 1978, the act and resolution are identical in terms to D.C. Act 2–239 and Resolution 2–389, *supra.*

8. *First Emergency Cooperative Regulations Act of 1979*, D.C. Act 3–12, approved January 25, 1979.

Accompanied by *Resolution 3–12*, January 16, 1979, this act is identical to its predecessor except that additional amendments were made to D.C. Code provisions governing the Relocation Assistance Office. Resolution is identical to *Resolution 2–447*, *supra.*

9. *Second Emergency Cooperative Regulation Act of 1979*, D.C. Act 3–37, approved May 4, 1979.

Accompanied by *Resolution 3–73*, April 10, 1979, the act and the resolution are substantially identical to their predecessor's except for dates.

10. *Third Emergency Cooperative Regulation Act of 1979*, D.C. Act 3–79, approved August 3, 1979.

Accompanied by *Resolution 3–170*, July 17, 1979, which recites that permanent legislation is before the Mayor and the moratorium must meanwhile remain in effect to avoid chaos. Provisions of this act are identical to D.C. Act 3–37, *supra.*

On June 5, 1979, the Council finally did adopt "permanent" legislation in the *Cooperative Regulation Act of 1979*, which became D.C. Law 3–19 on September 28, 1979, upon expiration of the 30 day period for Congressional review. This law, containing essentially the same provisions as those included in the "emer-

gency" acts that preceded it, was adopted by the Council almost three years after the enactment of the 180 day moratorium, approved by Congress, which was supposed to allow the Council time to enact permanent legislation on this subject.

C. *Count Three:*

On November 29, 1977, the Council passed the *Rental Housing Act of 1977*, D.C. Act 2–118. Upon completion of the Congressional review period, it became D.C. Law 2–54 on March 16, 1978, 45 D.C. Code §§ 1681 *et seq.* (Supp. VI, 1979). "Permanent" legislation to amend that act has been passed by the Council in the *Offer to Purchase Act of 1997*, D.C. Act 3–75, approved August 1, 1979, which became law on October 18, 1979, and the Multi-Family Rental Housing Purchase Act of 1979, which completed Congressional review and became D.C. Law 3–18 on September 28, 1979. In the interim between the enactment of the *Rental Housing Act of 1977* and the "permanent" amendments, the substance of these amendments was encated in the form of numerous "emergency" measures, as follows:

1. *Emergency Offer to Purchase Act of 1978*, D.C. Act 2–273, approved September 1, 1978.

Accompanied by *Resolution 2–425*, August 10, 1978, this act amended Section 601 and 602 of the *Rental Housing Act of 1977*. The resolution describes perceived inadequacies in the 1977 Act and states that an emergency exists in that immediate amendment of the provisions of the 1977 Act is needed to prevent evictions of tenants.

2. *Emergency Multi-Family Rental Housing Purchase Act of 1978*, D.C. Act 2–277, approved October 3, 1978.

Accompanied by *Resolution 2–434*, September 19, 1978, which finds an emergency in the fact that the amendment to Section 602(b) of the 1977 Act contained in this act would be beneficial to tenants, who would otherwise be at a disadvantage in seeking to buy their dwellings.

3. *Second Emergency Offer to Purchase Act of 1978*, D.C. Act 2–315, approved December 15, 1978.

Accompanied by *Resolution 2–471*, November 14, 1978, which recites that permanent legislation had been introduced in the Council, this act and resolution are otherwise identical to D.C. Act 273 and Resolution 2–425, *supra*.

4. *Emergency Multi-Family Rental Housing Purchase Act of 1979*, D.C. Act 2–314, approved December 14, 1978.

Accompanied by *Resolution 2–469*, December 12, 1978, this act deletes § 602(b) of the Rental Housing Act of 1977 and substitutes a new § 602(b). The resolution recites that "permanent" legislation was under consideration in Committee, but a scheduled recess was coming up, so no permanent legislation could be enacted prior to expiration of previous emergency act (D.C. Act 2–277), and this constituted an emergency.

5. *Second Emergency Multi-Family Rental Housing Purchase Act of 1979*, Act 3–15, approved March 13, 1979.

Accompanied by *Resolution 3–39*, which states that Committee consideration of "permanent" legislation continues and "permanent" legislation cannot be enacted before expiration of D.C. 2–314, *supra*. Provisions of this act are identical to those of D.C. Act 2–314, *supra*.

6. *First Emergency Offer to Purchase Act of 1979*,[3] D.C. Act 3–16, approved March 16, 1979.

Accompanied by *Resolution 3–42*, reciting that permanent legislation had been introduced in the Council but would not be enacted prior to expiration of D.C. Act 2–315, thus creating the need to reenact the provisions of D.C. Act 2–315.

7. *Third Emergency Multi-Family Rental Housing Purchase Act of 1979*, D.C. Act 3–53, June 11, 1979.

Accompanied by *Resolution 3–119*, May 22, 1979, reciting same reasons for emergency as its predecessor (D.C. Act 3–15, *supra*) and noting that a "permanent" bill had been reported out of Committee.

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[3] The official title of this Act ("First") suggests that the Council anticipated when it passed this one that further "emergency" enactments on the same subject would be required, as proved to be the case.

8. ***Second Emergency Offer to Purchase Act of 1979***, D.C. Act 3–54, approved June 12, 1979.

Accompanied by *Resolution 3–120*, May 22, 1979, the act and resolution are substantially identical to D.C. Act 3–16 and Resolution 3–42, *supra*.

9. *Fourth Emergency Multi-Family Rental Housing Purchase* Act of 1979, D.C. Act 3–90, approved August 27, 1979.

Accompanied by *Resolution 3–179*, July 31, 1979, this act was enacted subsequent to transmittal of permanent legislation to Congress, to "fill the gap" between enactment of the "permanent" bill and expiration of the Congressional review period.

10. *Latest Conforming Emergency Offer to Purchase Act of 1979*, D.C. Act 3–96, approved August 27, 1979.

Accompanied by *Resolution 3–205*, this act includes provisions of the previously-enacted "permanent" bill on this subject as well as those of its predecessors. It is also a "fill the gap" act, to cover the period of Congressional review.

The parties do not dispute that the above-listed acts were enacted by the Council by the requisite majority. Consequently, the only issues remaining in this case are issues of law. Summary judgment is therefore appropriate at this time.

III. ISSUES PRESENTED

1. Whether any of the matters raised in plaintiff's Complaint are moot.
2. Whether the Home Rule Act permits the Council to successively enact the same or similar "emergency" legislation.

IV. DISCUSSION

1. Mootness

At the outset, the Court must address the argument, vigorously asserted by defendant and intervenor-defendants, that the second and third counts of the complaint are moot. Since all of the emergency statutes at issue in these counts have expired or have been superceded by "permanent" legislation,[4] injunctive relief is not available as to those counts, as plaintiff conceded at oral argument. However, those counts continue to present a justiciable controversy susceptible of resolution through a declaratory judgment.

The defendant takes the position that the Council may, consistent with the Home Rule Act, reenact substantially the same emergency measure an indefinite number of times, and the succession of statutes at issue in plaintiff's counts two and three graphically illustrates the Council's adherence to that position. If defendant could evade judicial review of this practice by enactment of identical permanent legislation whenever the practice is challenged, the practice could be forever "capable of repetition, yet evading review." *Southern Pacific Terminal Co.* v. *ICC*, 219 U.S. 498, 515 (1911).

In considering the mootness issue in a case strikingly similar in principle to the present matter, the Supreme Court has held that a case is not moot when "(1) The challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again" *SEC* v. *Sloan*, 436 U.S. 103, 109 (1978) (quoting *Weinstein* v. *Bradford*, 423 U.S. 147 (1975)). Here, ninety days is certainly not sufficient time for full litigation of the validity of these acts, and the Council's conduct and the legal arguments submitted on its behalf leave more than a reasonable expectation that the Council would, if it were legal for it to do so, enact additional emergency acts affecting plaintiff and its members. *See also County of Los Angeles* v. *Davis*, 99 S. Ct. 1379 (1979).

Additionally, the Council has demonstrated in the conduct underlying all three counts, that enactment of "permanent" legislation does not necessarily mean that

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[4] The matters in Count two have been addressed in the Cooperative Regulation Act of 1979, D.C. Law 3–19, which became law on Sept. 28, 1979. The matters in Count Three have been dealt with in the MultiFamily Rental Housing Purchase Act of 1979, D.C. Law 3–18, which became law on Sept. 28, 1979, and the Offer to Purchase Act of 1979, D.C. Law 3–26, which became law on Oct. 18, 1979. In light of these events it is unnecessary for the Court to decide the issue, raised at argument, of whether successive reenactment of emergency acts may be permissible during the period that a permanent act is before Congress for review.

no further "emergency" enactments will be forthcoming on the same subject, since all of the emergency statutes at issue here supercede, suspend, or amend provisions of the D.C. Code. In short, defendant has failed to meet its heavy burden of demonstrating mootness. *United States* v. *W. T. Grant*, 345 U.S. 629 (1953).

2. Sucessive Enactment.

Plaintiff alleges that the Council has abused its "emergency" legislative power, in successively enacting the acts at issue in this case. As a threshold matter, it is necessary for the Court to define the parameters of the Council's emergency power.

Neither the Home Rule Act, nor its legislative history, nor any reported decision in this jurisdiction, contain a definition of the term "emergency circumstances". However, prior statutory provisions in the District, resolutions of the Council, and judicial decisions of other jurisdictions provide a more than adequate basis for this Court to judicially construe the statutory language.

The appointed Council which preceded the current elected Council was subject to the provisions of the D.C. Administrative Procedure Act, 1 D.C. Code §§ 1501 *et seq.* Section 6(c) of that Act provides in part that, when

> in an emergency, as determined by the Commissioner or the Council or an independent agency the adoption of a rule is *necessary for the immediate preservation of the public peace, health, safety, welfare, or morals*, the Commissioner or Council or such independent agency may adopt such rules as may be necessary in the circumstances, and such rules as may be necessary in the circumstances, and such rule may become effective immediately. [emphasis added]

This provision was also included in the Rules of the appointed Council, 2 D.C.R.R. § 2.6(b).

While defendant correctly points out that the elected Council under the Home Rule Act has far broader legislative authority than its predecessor, that body has also adopted the standard set forth above for defining emergency action. *See Emergency Condominium Cooperative Conversion Stabilization Resolution of 1979*, Resolution 3–201 (July 31, 1979); *Emergency Condominium Cooperative Conversion Control Resolution of 1979*, Resolution 3–126 (May 22, 1979); *Amendment Defining Emergency in the Council Rules*, Proposed Resolution 2–19 (introduced in 1977 but apparently not adopted by the Council).

The "emergency circumstances" language used by Congress in the Home Rule Act is not uncommon in municipal charters, as Congress recognized when the provision giving the Council this power was added to the proposed Home Rule bill in Committee. *See Home Rule for the District of Columbia, 1973–1974, Background and Legislative History*, pp. 1042–43 (Committee Print, 1974). The Courts of other jurisdictions have had numerous opportunities to consider the meaning of such a provision, and the weight of authority supports the conclusion that an emergency is "an unforeseen occurrence or condition calling for immediate action; an exigency; a crisis; or a time of difficulty or danger." 5 McQuillan, *Municipal Corporations*, § 15.40, and cases cited therin (n. 38). *See* "The Emergency Legislation Authority of the Council", 1 Opinions of the Corporation Counsel, D.C. 467, 472 (1977).[5]

The Court therefore holds that the emergency legislative authority of the Council, conferred by 1 D.C. Code § 146(a), may properly be invoked only where two thirds of the members of the Council find that circumstances exist constituting an unforeseen occurrence or condition calling for immediate action to preserve the public peace, health, safety, welfare or morals. It is a power intended for use only in times of exigency, crisis, difficulty or danger.

Statutory construction and issuance of a declaratory judgment based thereon are traditional functions of the judiciary and are within the jurisdiction of this Court. *McIntosh* v. *Washington*, 395 A.2d 744 (D.C. App. 1978). This Court is empowered to prospectively enjoin enforcement of any act enacted by the Council which contravenes, procedurally or substantively, the United States Constitution or an act of Congress, so that the remedies potentially available to the plaintiff are clear.[6] Plaintiff conceded at argument that it did not seek to have the Court review the Council's factual determination that the rental housing situation in

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[5] Hereinafter cited as Op. C.C., D.C.

[6] The Court iterates that the substantive provisions of the acts at issue here are not before the Court for review in this action.

the District rose to the level of an emergency, and such an inquiry is in any event unnecessary in light of the Court's disposition of this case.[7]

The only issue remaining is whether the Council, having found an emergency to exist, may successively reenact substantially the same emergency act, so as to continue the substantive provisions of such an act in force for more than ninety days, without a second reading or Congressional review. This, also, is an issue of statutory construction. The question will then become one of determining what relief, if any, is appropriate in light of the great reluctance that this and every Court should have to interfere in the province of the legislature.

Defendant argues that the Council may successively enact emergency legislation so long as a new emergency resolution is first passed each time by the required majority. Plaintiff's position is that, with a possible exception not present here, the Council may not do so, but rather must submit such legislation to a second reading and Congressional review if a duration of more than ninety days is desired.

The plain language of the statute provides greater support for plaintiff's position than for that taken by defendant. When the legislative history of the Home Rule Act and the 1978 amendments thereto is considered, the only natural and logical conclusion that can be reached is that the Congress did not confer upon the Council the power to enact "temporary" legislation of indefinite duration through repeated use of the emergency power.

Section 412(a) of the Home Rule Act, as amended, 1 D.C. Code § 146(a) (Supp. VI, 1979), provides a limited exception to the procedural requirements which Congress required the Council to follow in enacting legislation. It is clear that Congress expected the Council to have a second reading of all legislation routinely enacted by the Council, and to submit that legislation to Congress for review prior to its becoming law. These procedural requirements are not mere formalities. The purpose of the second reading is to provide an opportunity for interested citizens to have notice of a bill and to submit their views to their representatives prior to final consideration of that bill. *See Home Rule for the District of Columbia, 1973–1974, Background and Legislative History*, p. 1042. (Committee Print, 1974). The opportunity for Congressional review is provided for in the act as a means to facilitate Congress' discharge of its ultimate Constitutional responsibility for the affairs of the District of Columbia. *Id.*, p. 2084 *et seq.*

The "emergency" power was added to the Home Rule Act in Committee in conjunction with the amendment adding the second reading rule, *id.*, pp. 1042–43, to enable the Council to bypass the second reading in the case of true emergencies. It is clearly intended to be used for extraordinary circumstances, not routine legislation, no matter how desireable or beneficial such legislation may be.[8]

By its terms, the Home Rule Act provides that an emergency act "shall be effective for a period of not to exceed ninety days." 1 D.C. Code § 146(a). It is clear to the Court that the statutory language is not susceptible of any reasonable interpretation other than that the Council may not, through its emergency power, continue in effect substantially the same substantive provisions of law for more than ninety days without a second reading of the act. This is what Congress anticipated. *Home Rule for the District of Columbia, 1973–1974, Background and Legislative History*, p. 1043 (Committee Print, 1974). *See SEC* v. *Sloan*, 436 U.S. 103, 112 (1978).

Defendant has argued that *SEC* v. *Sloan*, *supra*, is distinguishable on the ground that the statutory language at issue in that case differs materially from that of the Home Rule Act, so that the SEC Act limits the remedy while the Home Rule Act limits only the duration of a single act. The Court finds that argument unpersuasive, in light of the plain language of Section 412(a) of the Home Rule Act.

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[7] While there is a split of authority among the Courts that have had occassion to consider whether the legislature's finding of an emergency is conclusive on the Courts, See. 5 *McQuillan, Municipal Corporations* § 15.40 (3. d Ed. 1969), this Court is of the opinion that the better rule is that such a factual determination, made on the basis of the standard enunciated herein, would be conclusive on the court unless it were apparent on the face of the act and/or resolution itself that no emergency could have existed. Any doubt should be resolved in favor of the legislative determination.

[8] Plaintiff has suggested, and defendant has not contested the suggestion, that the Council has used the emergency power extensively to legislate on numerous issues. The Court emphasizes that this power is not intended to be used as a "shortcut" vehicle for enacting routine or temporary measures.

Defendant has also argued that Congress has implicitly approved the Council's practice of successively reenacting emergency measures, in the course of Congressional consideration of the 1978 amendments to the Home Rule Act. The Supreme Court rejected a far more persuasive argument for Congressional approval in *SEC v. Sloan, supra.*, stating that

> We are extremely hesitant to presume general congressional awareness of the Commission's construction based only upon a few isolated statements in the thousands of pages of legislative documents. That language in a Committee Report, without additional indication of more widespread congressional awareness, is simply not sufficient to invoke the presumption in a case such as this. For here its invocation would result in a construction of the statute which is not only at odds with the language of the section in question and the pattern of the statute taken as a whole, but is extremely far reaching in terms of the virtually untrammeled and unreviewable power it would vest in a regulatory agency.
>
> Even if we were willing to presume such general awareness on the part of Congress, we are not at all sure that such awareness at the time of re-enactment would be tantamount to amendment of what we conceive to be the rather plain meaning of the language of § 12(k).

Id., 436 U.S. 121. In any event, the only context in which Congress may be said to have approved the Council's use of its emergency power in 1978, is with respect to "filling the gap" created by the Congressional review period, and it is arguable that Congress' intent in 1978 was to eliminate the justification for doing even that in the future. There is no explicit Congressional approval of the Council's use of the emergency power to enact temporary legislation for an indefinite period while the Council considers permanent legislation.

The Corporation Counsel of the District of Columbia, who is the District's chief legal officer, has repeatedly stated, in published opinions, that successive enactment of "emergency" legislation is violative of the Home Rule Act. *Comments on EA 1–86: Emergency Cooperative Regulation Act of 1976*, 1 Op. C.C., D.C. 424 (1977); *The Emergency Legislation Authority of the Council*, 1 Op. C.C., D.C. 467 (1977); *Comments on EA 2–133, the "First Emergency Housing Discontinuance Regulation Act of 1978,"* 3 Op. C.C., D.C. 258 (1978). Such opinions "are entitled to weight unless plainly unreasonable or contrary to ascertainable legislative intention." *Williams* v. *WMATC*, 153 U.S. App. D.C. 183, 189, 472 F.2d 1258, 1264 (1972); *Jordan* v. *District of Columbia*, 362 A.2d 114, 118 (1976). Although Corporation Counsel has found itself compelled to adopt a radically different position in the course of fulfilling its duty to the District in defending this action, the earlier opinions of that office reflect a more reasoned interpretation of the Home Rule Act.

Defendant's argument that Congress, in requiring a two thirds majority of the entire Council for enacting an emergency act, intended no other limitation on the use of the emergency power is totally unpersuasive in light of the plain language and legislative history of the Home Rule Act. The imposition of this requirement, indeed, highlights the congressional intent that the emergency power be a limited exception to the legislative procedures required by Congress in the Home Rule Act.

The Court concludes that the successive enactment of substantially the same substantive provisions of law through the emergency power, maintaining such provisions in effect for more than ninety days without a second reading or submission for Congressional review is, with respect to the statutes at issue before the Court, unlawful.[9]

WHEREFORE, it is this 19th day of October, 1979.

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[9] Contrary to defendant's assertions, this holding will not "hamstring" the legislative authority of the Council. Alternative procedures for achieving the results sought by the Council through successive emergency enactments are available. All the Council need do to enact temporary legislation is to follow the procedure it used in enacting the Cooperative Conversion Moratorium Act, D.C. Law 1–71, 29 D.C. Code § 801 (Supp. V. 1978). Furthermore, as the Office of the Corporation Counsel has previously observed, it was Congress' expectation that the Council would treat the enactment of an emergency act as the first reading of a permanent act, so that a second reading and Congressional review could usually be completed within the allotted ninety days. The Council has chosen not to follow that procedure. Should it be the judgment of the Council that it needs the authority to enact emergency legislation of indefinite duration without a second reading or Congressional review, that authority could be sought from Congress.

ORDERED that enforcement of the *Emergency Condominium and Cooperative Conversion Stabilization Act of 1979*, D.C. Act 3-95 (approved August 27, 19.9) is enjoined.

And it is FURTHER ORDERED, ADJUDGED AND DECLARED that those emergency acts at issue herein, which were enacted to continue in force the substantive provisions of prior emergency acts, were unlawfully enacted.

And it is FURTHER ORDERED that plaintiff's Motion for Summary Judgment is GRANTED to the extent set forth herein and otherwise DENIED. Defendant's cross-Motion for Summary Judgment is DENIED.

GEORGE H. REVERCOMB, *Judge.*

(C.A. No. 10624-79)

THE WASHINGTON HOME OWNERSHIP COUNCIL, INC., PLAINTIFF

v.

DISTRICT OF COLUMBIA, DEFENDANT

METROPOLITAN WASHINGTON PLANNING AND HOUSING ASSOCIATION, INC., ET AL. ITERVENOR-DEFENDANTS

Copies of the foregoing Opinion and Order in the above case were mailed postage prepaid to parties indicated below on October 19, 1979.

GLORIA M. FULLER,
Secretary to Judge Revercomb.

Stephen M. Sacks, Esquire, Arnold and Porter, 1229 19th Street, N.W., Washington, D.C.

James J. Stanford, Esquire, Assistant Corporation Counsel for the District of Columbia, District Building, Washington, D.C.

Jerry D. Anker, Esquire, Wald, Harkrader & Ross, 1300 9th Street, N.W., Washington, D.C.

Kerry Alan Scanlon, Esquire, Washington Lawyers' Committee for Civil Rights Under Law, 733 15th Street, N.W., Washington, D.C.

Jason I. Newman, Esquire, Harrison Institute for Public Law 605 G Street, N.W., Suite 401, Washington ,D.C.

64-864 O - 80 - 6

AMEND HOME RULE ACT—COUNCIL EMERGENCY ACTS

WEDNESDAY, JUNE 11, 1980

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT AFFAIRS AND BUDGET,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The subcommittee met at 9:35 a.m., in room 1310, Longworth House Office Building, Hon. Walter E. Fauntroy (chairman of the subcommittee) presiding.

Present: Representatives Fauntroy and Fenwick.

Also present: Steven A. Horblitt, Howard Lee, and Wanda Diggs, subcommittee staff; Elizabeth D. Lunsford, general counsel; James T. Clark, legislative counsel; Harry M. Singleton, minority chief counsel; and Karen Ramos-Bates, minority staff.

STATEMENT OF DELEGATE FAUNTROY

Mr. FAUNTROY. The meeting of the Subcommittee on Government Affairs and Budget will come to order.

Today, we undertake a hearing to assess the impact of the District of Columbia Court of Appeals Opinion rendered on May 28, 1980, in the case of the *District of Columbia, et al.* Appellants, v. *The Washington Home Ownership Council, Inc.*, Appellee (No. 79–1053), on the legislative process of the District of Columbia City Council.

Specifically, the Subcommittee on Government Affairs and Budget will today hear testimony on issues germane to the May 28 ruling on the emergency powers of the City Council.

This hearing is a continuation of the December 5, 1979, hearing held by this subcommittee on this subject.

H.R. 5927 AND H.R. 5928

At that time, the subcommittee heard testimony related to two bills: H.R. 5927, a bill to set out the conditions under which the Council of the District of Columbia may enact emergency acts, and for other purposes; and H.R. 5928, a bill to amend the District of Columbia Self-Government and Governmental Reorganization Act to eliminate the congressional review period for acts of the Council of the District, other than acts relating to crimes, criminal procedures, and prisoners and acts proposing amendments to title IV of such act.

Also at that time, my good friend and colleague—and proven advocate of the District of Columbia—the ranking minority member of the Committee on the District of Columbia, Congressman Stewart B. McKinney, brought forth for discussion a draft bill, now H.R. 6147.

H.R. 6147

H.R. 6147 has as its purpose to amend the District of Columbia Self-Government and Governmental Reorganization Act to reduce from 30 to 7 legislative days the period for congressional review of acts of the Council of the District of Columbia which do not involve a Federal interest.

H.R. 6147 would allow such acts to take effect during a congressional recess or adjournment, and would repeal the authority of the Council of the District of Columbia to enact temporary emergency legislation, and for other purposes.

REMEDIAL LEGISLATION

Our goal is to evaluate the possible need for remedial legislation by the Congress on both a short- and long-term basis. The objectives of such potential remedial legislation would be to structure a more efficient and certain legislative process. We do this now in the context of the May 28 ruling of the court of appeals that Congress intended the City Council energency power to be an exception to the fundamental legislative process requiring a second reading and congressional layover, and that emergency legislation was not an alternative legislative track to be used repeatedly in the same substantial emergency.

It is my goal to assist the city in structuring a legislative process that is streamlined and predictable. This may entail legislation comprising elements of the bills initially introduced by me—H.R. 5927 and H.R. 5928—as well as H.R. 6147 authored by Congressman McKinney.

I also am interested in making sure the city is free of any legal challenges that might surface in the context of past emergency legislation.

[Mr. Fauntroy's prepared statement follows:]

LEGISLATION BACKGROUND

INTRODUCTION

This hearing is a continuation of the hearing held on December 5, 1979, dealing with H.R. 5927 and H.R. 5928, amendment to the Home Rule Act. H.R. 5927 would establish a period of 180 days during which emergency legislation passed by the city could remain in effect. This bill would provide that the Council cannot adopt a second emergency act based on the same emergency and for the same purpose and subject matter as the first emergency act. H.R. 5928 would eliminate the Congressional review period for acts passed by the city government with the exception of Acts relating to crimes, criminal procedure, prisoners, and acts relating to Title IV (The Charter) of the Home Rule Act. At the time of the hearing on December 5, 1979, Congressman Stewart McKinney proffered the text of H.R. 6147 which would amend the Home Rule Act to reduce from thirty to seven legislative days the period for congressional review of acts of the Council of the District of Columbia which are held to not involve a Federal interest and to allow such acts of the Council to take effect during a congressional recess or adjournment with later review.

HISTORY

On October 19, 1979, the Superior Court of the District of Columbia ruled in *Washington Home Ownership Council, Inc.* v. *District of Columbia* (C.A. No. 10624-79) on the legality of successive emergency acts concerning a substantially identical subject matter. The Superior Court held "... that the successive enactment of substantially the same substantive provisions of law through the ency power, maintaining such provisions in effect for more than 90 days out a second reading or submission for Congressional review is, with ct to the statutes at issue before the court, unlawful."

On July 10, 1979, the first Interest Rate Modification Emergency Act of 1979 enacted by the District of Columbia City Council (EA 3–52) removed the interest ceilings on home mortgage loans in the District of Columbia. This enactment was superseded by the Interest Rate Modification Second Emergency Act of 1979 (EA 3–79) passed on October 5, 1979, which established a mortgage interest rate ceiling of 15 percent. As EA 3–79 was the second successive emergency act concerning interest rate legislation, FNMA (Federal National Mortgage Association) and FHLMC (Federal Home Loan Mortgage Corporation) questioned the legal sufficiency of this enactment based on the October 19, 1979 ruling by the Superior Court.

On November 20, 1979, the President signed H.R. 5811 that made immediately effective Council Act EA 3–79 making permanent the 15 percent interest ceiling. This legislation was necessary because of the provisions of Section 602(c)(1) of the Home Rule Act that requires a 30-day congressional review of council acts prior to their becoming law. Hearings on H.R. 5811 were held by the full committee on November 8, 1979 and the House passed the bill on November 13, 1979.

On December 5, 1979, the Subcommittee on Government Affairs and Budget met specifically to take testimony on H.R. 5927, H.R. 5928, the proffered text of H.R. 6147 and the general issue of emergency enactments and review by the Congress.

SUMMARY—DECEMBER 5, 1979 HEARING

The testimony generally revealed that City Council acts had an average congressional layover period of 52 days. Acts 3–55 through 3–81 which were received by the Speaker of the House during the summer months of June, July, and August, had their required 30-day layover period stretched to as much as 78 days as a result of the congressional recess and adjournment.

Mayor Barry, when asked what he thought was a reasonable response to the problem, indicated that "... by eliminating the 30-day congressional review period required before legislation enacted by the District Government can take effect ... a much more effective and efficient legislative process would result." He further indicated that the Council faces a number of complex problems faced by jurisdictions all over the region and country, and has used its emergency legislative powers in a responsive manner, especially in light of the fact that the average length of time, even under the most expeditious situation requires anywhere from 5 to 6 months for local legislation to become effective from the time of introduction.

He was supported in his testimony by Ms. Judith Rogers, Corporation Counsel, Ms. Barbara Washington, Assistant Administrator for Intergovernmental Affairs. Arrington Dixon, Chairman of the City Council, added that the 30-day review process has been one of the factors that has caused the Counsel to use their emergency powers.

The Committee also heard from representatives of FNMA and FHLMC concerning their decision to end purchases of mortgages in the secondary market, as a result of the lower court decision rendered in *Washington Home Ownership Council, Inc.* v. *District of Columbia.* (C.A. No. 10624–79).

Thomas J. Owen, Chairman of the Board and President of Perpetual Federal Savings and Loan Association, asked in his concluding statement that "... the legislative process of the District be clarified so that Congress, the City Government and the Courts all agree as to the number and term of emergency bills which can be enacted on any one subject. To the extent that there must be a congressional review of District legislation this review process must be clarified so as to permit the City to conduct its legislative process in a rational manner.

No action was taken by the Subcommittee on these bills pending a ruling by the District of Columbia Court of Appeals in the *Washington Home Ownership Council* case.

On May 28, 1980. the District of Columbia Court of Appeals in *District of Columbia* v. *The Washington Home Ownership Council, Inc.* (D.C. Appeals 79–1053) affirmed the decision of the lower court holding that "... the Council has no authority to pass another substantially identical emergency act in response to the same emergency."

[The court opinion referred to appears in appendix D, p. 181.]

Mr. Chairman, it is a real pleasure to have you before our committee.

It is my pleasure to welcome both the representative of the Mayor and the distinguished Chairman of the City Council for testi-

mony at this time, and I understand that the Chairman does have a commitment.

He has asked to be allowed to be the first witness and I will so allow that. Mr. Chairman. it is a real pleasure to have you before our committee and we look forward with great anticipation to your testimony and particularly your assessment of the impact of the May 28 decision upon the legislation which we have been considering and which we now must consider in earnest in light of that decision.

STATEMENT OF HON. ARRINGTON DIXON, CHAIRMAN, COUNCIL OF THE DISTRICT OF COLUMBIA, ACCOMPANIED BY LAWRENCE H. MIREL, GENERAL COUNSEL TO THE DISTRICT OF COLUMBIA

Mr. DIXON. Thank you. I am joined by my General Counsel, newly selected by the Council, Larry Mirel, who will be available to respond to possible questions that might follow my testimony.

I am going to be called downtown to another meeting at which I need to be present and I appreciate your allowing me to go first.

Written copies of my testimony have been presented to you. At this time I would like to read the testimony.

Mr. Chairman and members of the committee, I am pleased to be here this morning, and I appreciate very much your concern that the Council of the District of Columbia can continue to function effectively in light of the recent ruling of the D.C. Court of Appeals in the *Washington Home Ownership Council* case.

I am happy to be able to say, right at the start, that we have analyzed the court's ruling closely, and that—in part because the court itself took steps to delay the impact of its ruling—we believe we have the current authority to prevent any gaps in the coverage of our statutes, despite the fact that the court has ruled that second emergency acts in response to the same emergency are not permissible under the Home Rule Charter.

COUNCIL'S STOPGAP MEASURES

The court in its opinion stayed its own mandate for 90 days to allow us time to cope with the potential difficulties caused by the opinion. We have moved quickly to try to put in place permanent statutes to replace those of the 13 emergency acts now in force that need to be continued, in the manner suggested by the court.

Each of these permanent pieces have already been passed on first reading, and we hope to be able to pass them on second reading at our next legislaitve session on June 17. They will then go to the Mayor for signature and then to the Hill, which will start the clock running on the 30-day congressional review period.

If Congress should adjourn before completion of the 30-day period, we would then be able to pass new emergency acts to cover the gap before the permanent piece can take effect, as the court of appeals suggested in footnote 20 of its opinion.

Although we believe these stopgap measures will work, and that the citizens of the District of Columbia will be adequately protected against an unintended lapse of any legislation, this is clearly no way

to legislate. We have had to pass these permanent acts without adequate time for consideration, and sometimes without even completing committee reports.

AMENDMENTS PROPOSED

I welcome the chance, therefore, to recommend to this committee legislative changes by the U.S. Congress that would allow the Council of the District of Columbia to be more deliberative in its legislative process.

The difficulty we face is really quite simple. The 90-day period of effectiveness for emergency acts passed by the Council would allow sufficient time for the passage of replacement permanent legislation were it not for the 30-legislative-day congressional review requirement. Historically, as you know, the 90-day emergency act provision was written into the Home Rule Charter—and its effect on the legislative process considered by Congress—before the 30-day review provision was added. The net impact of these two provisions is to make it extremely difficult, if not impossible, for the Council to have a permanent law in place by the time the 90-day emergency period expires.

Since the court of appeals ruling has prohibited a second emergency act for the same emergency, we are almost certain to have a gap in the coverage. Such a gap would create untold chaos for our citizens, and would result in numerous long and expensive lawsuits. I do not think that Congress intended any such results, and I therefore believe that Congress should seek to prevent these effects through legislation.

FAVORS DELETING 30-DAY LAYOVER

My first preference, as I am sure you know, would be to do away with the 30-day layover period altogether. This layover provision is not necessary to protect Congress constitutional authority to legislate for the District of Columbia, since Congress always has plenary authority under the Constitution to legislate for the District of Columbia.

Instead, the main practical effect of the 30-day layover period is simply to delay, for a period that can stretch to 7 months or more, the taking of effect of statutes passed by the District of Columbia Council.

In addition to the fact that this is a constant reminder that we do not have full home rule, it also creates an unnecessary uncertainty within our legislative process. Because of congressional recesses we can never be sure when one of our statutes will take effect. For example, it may well be that anything passed by the Council after our June 17 legislation session will not become law until March 1981, given the national elections this fall and, therefore, the long periods of congressional adjournment.

FAVORS 180-DAY EMERGENCY ACTS

If, however, Congress wishes to retain its 30-day layover requirement, then it seems to us that it should be willing to extend the effective period of emergency acts to 180 days. In most circumstances this will give the Council the opportunity to implement permanent legislation to replace any emergency acts, and to do so in a thoughtful and responsible manner.

The D.C. Court of Appeals, in its ruling, pointed out correctly that it is theoretically possible for the Council to pass a permanent act within 90 days. In order to do so, however, the Council would have to shorten drastically its present notice provisions, and the Mayor would have to sign Council bills on virtually the same day that he receives them.

Moreover, any attempts to amend the provisions of a bill once it is introduced would automatically put us beyond the 90-day limit. To pass statutes under such circumstances is grossly unfair to the Council and to the Mayor and, more importantly, to the public.

The purpose of notice and hearings, after all, is to allow the public to make comments on pending legislation and, therefore, to give the Council the benefit of citizen input. Without this opportunity, the legislation passed by the Council will inevitably suffer, and the Council may in its haste cause substantial unintended damage to individuals or groups of citizens. A legislature ought to be a deliberative body, and we therefore must be given the time to deliberate.

We believe that extending the emergency acts' effectiveness to 180 days would give us enough time in almost all cases. By automatically extending the period still further when Congress, because of adjournments or recess, is not able to complete its 30-day review, will insure against legislative gaps in virtually every case.

I have taken the liberty of drafting some language that I think would accomplish this objective, and I would like to present it to the committee at this time and ask that it be inserted in the record of this hearing.

I will now be delighted to answer any questions you may have. Thank you for your attention.

Mr. FAUNTROY. Thank you. Without objection, the additional drafted language will be submitted as a part of the record at this point.

[The draft of Council Powers Clarification Act by Mr. Dixon follows:]

[H.R. —, 96th Cong., 2d sess.]

A BILL To amend the District of Columbia Self-Government and Governmental Reorganization Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This act may be cited as the "Council of the District of Columbia Powers Clarification Act of 1980".

SEC. 2. The fifth sentence in section 412(a) of the "District of Coumbia Self-Government and Governmental Reorganization Act", approved December 24, Self-Government and Governmental Reorganization Act", approved December 24, 1973 (87 Stat. 777; Pub. L. 93–198) is deleted and the following sentences are added in lieu thereof to read as follows:

"The Council, may adopt emergency acts by two-thirds vote of its members, and such act may be passed after a single reading or such act shall take effect immediately upon enactment. The Council shall make sufficient findings within the emergency act to support its adoption. An emergency act shall be effective for a period of not to exceed one hundred eighty days: *Provided, however,* That such one hundred eighty day period shall be extended by as many days (excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) as may be necessary to complete the period of congressional review provided in section 602(c)(1), of substantially identical permanent legislation if Congress by recess or adjournment, prevents such

permanent legislation from taking effect prior to the expiration of the one hundred eighty day emergency period. Should the Congress disapprove an act of the Council as provided in section 602(c)(1), any emergency act whose period of effectiveness has extended beyond one hundred eighty days shall expire on the day following the adoption of such concurrent resolution of disapproval.".

SEC. 3. This act shall take effect immediately.

Mr. FAUNTROY. Let me say, first of all, Chairman Dixon, that I am very favorably impressed with the solutions you suggest, either the elimination of the 30-day period or if that is not possible, the extension to the 180-day emergency period.

You have done this for me in the past at the previous hearing, but I wonder if you would care to review for the committee and for the record why the City Council found it necessary to pass a series of emergency acts pertaining to the same general subject?

NECESSITY FOR EMERGENCY ACTS

Mr. DIXON. As I indicated in my testimony, as a result of the 30-day review period we have to put in place a series of two or more emergencies to cover that gap. Also, you know only recently—now its been a year or so—the Congress recess was even exacerbated and required both Houses to be in session, so we have had to historically use that for that purpose.

In addition, the Council, in deliberating over complex pieces of legislation, has put in place emergency legislation to allow us to consider in a more extensive way permanent measures that would be more comprehensive in nature.

Those are the two basic reasons to deal with problems that are critical and required some deliberation over permanent solutions.

Mr. FAUNTROY. I have been concerned as to whether or not there is any possibility that the finding of a court could be used as a basis for further litigation by parties who may have relied on, or been forced to rely upon an expired successive emergency act and who might institute a claim for damages.

Do I take it from your testimony that, in fact, you have covered all of those possibilities by the action which the Council will have taken by the 17th?

Mr. DIXON. I would like General Counsel to respond to your question but I would point out, very briefly, I think we feel it is certainly because of our legislative actions to eliminate that possibility of the gaps in legislation to avoid threat of that lawsuit.

We also feel we are on sound ground in the area where emergency acts have been passed. We have a solution that we think would help us with that.

Mr. FAUNTROY. Mr. Mirel.

Mr. MIREL. Thank you, Congressman Fauntroy.

The court itself in its ruling indicated a concern not to create unnecessary problems for the District of Columbia government. For that reason they extended the issuance of its mandate from 90 days to allow us time to try to prevent gaps in coverage.

While I think, of course, people do sue for any reason at all, there is no way to prevent them from doing it, I think a suit would probably not be successful.

AMENDMENT TO RATIFY EMERGENCY ACTS

To make absolutely sure, however, it would help if Congress would ratify the acts that were passed on second emergency during the period before the mandate of the court issues. We have developed some legislative language to accomplish that purpose as well, and if the chairman would like we would be glad to make it available to the committee.

[The draft bill referred to follows:]

[H.R. —, 96th Cong., 2d sess.]

A BILL To amend the District of Columbia Self-Government and Governmental Reorganization Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This act may be cited as the "District of Columbia Council Emergency Powers Clarification Act of 1980".

SECTION 2. The District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 777; Pub. L. 93–198) is amended by adding a new section 412a thereto immediately following section 412:

"SEC. 412a

"No enactment of the Council adopted pursuant to section 412, prior to August 26, 1980, shall be held invalid solely for the reason that it was a successive emergency act substantially identical to an earlier emergency act passed in response to the same emergency.".

SEC. 3. This act shall take effect immediately.

Mr. FAUNTROY. I think we should make sure the court's decision has placed no further restraints upon the City Council. Is that right?

IMPACT OF COURT'S OPINION

Mr. DIXON. When you say no further restraints, I am not quite sure what you mean. The impact of the court's opinion is fairly narrow. It simply says the Council cannot pass a second or a subsequent emergency act dealing with the same emergency in substantially identical language after the first one unless there is a new emergency. That is all the court has said.

Mr. DIXON. I think it would be fair to say that the court has clearly limited our flexibility in not allowing us to pass the second emergency. I think that is the net result, to restrict us. Unless the Congress, through your support, does act, it will put restrictions on us that might be very difficult.

Mr. FAUNTROY. In the opinion handed down by the District of Columbia Court of Appeals, a particular footnote has been viewed by some as an exception whereby the City Council could maintain their power to enact successive emergency acts, which reads as follows:

[26]—As indicated at note 16 supra, we premise our analysis of the District's 'structural' argument on an assumption that Congress is in session, such that the 30-day layover period can run interrupted only by weekends and holidays. We do not foreclose the argument that a congressional recess after enactment but before the 30-day period has run may create a different emergency permitting a second, conservative emergency act. (Court of Appeals No. 79–1053, p.24)

I wonder if you care to comment on that.

Mr. MIREL. Mr. Chairman, that footnote seems to allow the Council, at the expiration of the first emergency, to pass a second emergency

act that is substantially identical to the first emergency act in those circumstances where Congress, because of adjournment or recess has been unable to complete the review process on pending permanent legislation.

While the footnote does seem to indicate that it does so in a less than positive way—"We do not foreclose the argument"—they are not saying how they would respond to such an argument. But the fact they even mention it here indicates they would certainly not be quick to rule it out.

Mr. FAUNTROY. I wonder if you care to comment on what kind of impact both the second reading rule and the lengthening of the period may have upon the Council's legislative process.

Mr. DIXON. I am not sure of the nature of the question in terms of the second reading rule.

Mr. FAUNTROY. You did indicate in your testimony that given your requirements for a second reading that it prevents the careful consideration of your legislative proposals given the constraints of both the emergency legislation and the layover period.

Mr. DIXON. The fact here is if there are amendments made during our second reading we would consider to then extend the period the legislation would be in the Council which would clearly put us outside the timetable of the 30-day review period and the time the period of the emergency act would stay in effect.

Just to allow us the flexibility to amend and then have an amendment at first or second reading, does in fact impact on our ability to deliberate in a thoughtful way over the legislation that is before us.

Mr. FAUNTROY. How might a more efficient method and less lengthy period other than congressional review of 30 days be utilized to ascertain the impact of a piece of legislation on the Federal interest?

Mr. DIXON. I think, Congressman, first of all, any period might really not be useful because I think that the Congress has the authority constitutionally to change or alter the actions of the Council of the District of Columbia. They always have that authority at any time.

I think to shorten the period, as one of our fine supporters has recommended in his proposed legislation (H.R. 6147), to a period of 7 days obviously is symbolic of support of where we are. But I think it might just cause maybe a more inappropriate concentrated focus on the Council's work that might again just exacerbate in some way or may not be as helpful as either eliminating it entirely or extending the period that the emergency would be in place so we could put permanent legislation in place in an effective way.

I would argue in favor of remaining with the 30 days and giving us greater emergency time or eliminating the 30 days altogether which would be our first option.

PROPOSED COUNCIL RULES CHANGES

Mr. FAUNTROY. Have you developed any new rules in the Council for determining the need or emergency legislation?

Mr. DIXON. We have. In fact, there have been been a number of efforts. One, members of the Council have suggested some new approaches that would expedite the time we could consider permanent

which would also speed up or eliminate our need for time for emergencies.

We have also required a greater qualification of need for emergency so that our emergency authority would be supported by harder information and a more lengthy report in qualifying that emergency.

We are also looking at a possible requirement for more notice when emergencies are going to be presented to the Council. There are some of us who believe they should be presented in some form prior to them being brought to the legislative body.

Yes; we have taken action to strengthen our emergency process and have already considered rule changes in the Council now.

Third, we are looking at ways informally of requiring greater notice for emergency.

[Proposed Council rules changes appear on p. 47.]

CURRENT EMERGENCY ACTS

Mr. FAUNTROY. How many emergency acts are currently in effect?

Mr. DIXON. We have 13 in effect at this time. Of those there are approximately five that we felt were going to be impacted by the court decision and have been dealt with in putting in place permanent legislation or timing another emergency consistent with the court order.

Mr. FAUNTROY. Thank you so much, Chairman Dixon, for your testimony. I know that you do have another commitment, but I would like to yield briefly to counsel if there are questions which you think are important that we get on the record.

EXTENSION BEYOND 180 DAYS

Mr. DIXON. If I may I would like to extend my remarks about the 180-day extension of the emergency powers. We would also like there to be consideration of having an undefined period beyond 180 days until Congress would either come back from recess or the time could run, or in fact it would be terminated if the legislation were disapproved by concurrent resolution.

Mr. FAUNTROY. It is a very persuasive argument. Mr. Chairman. Mr. Lee.

Mr. LEE. Mr. Chairman, the question that repeatedly comes up is one of uncertainty of the legislation in determining what would be the law. You have proposed that perhaps eliminating the review altogether still leaves Congress with its residual power over the District of Columbia government.

Wouldn't leaving it only to the Congress without this layover period not also create a level of uncertainty after it had been in effect and persons have relied upon that statute perhaps to their detriment?

Mr. MIREL. I think it does create uncertainty but I am not sure the present system eliminates that uncertainty unless you believe during the present 30-day layover every Member of Congress very carefully reviews each piece of legislation passed by the Council.

I think if some Member finds a problem with the bill passed by the Council even now, even after the 30 legislative days have run, they can introduce legislation that would overturn it. So I don't think the situation would be any different.

CONGRESSIONAL REVIEW OF 7 DAYS

Mr. SINGLETON. I have two questions I would like to put to you, Mr. Dixon. I just need some clarification of some things you said earlier. First of all, in talking about the proposal that Congressman McKinney has put forth about eliminating the 30-day congressional review period and reinstituting or putting in its place a 7-day period, there was made some mention about the shortened process causing more scrutiny of Council action.

I didn't really follow the argument that you were putting forth there. Could you clarify how the Council might get greater scrutiny of its acts because of a shortened review period?

Mr. DIXON. First of all, knowing the source of the amendment, that it was a move to get as close to the kind of review that many of us think is appropriate. There is a concern on my part and I think by the members, that that abbreviated period might create an artificial period that might cause more difficulties. I think there are also some concerns we have about that.

Mr. MIREL. There are a couple of problems in addition to the one the chairman mentioned. One is that it requires a determination of what is Federal interest. It doesn't define it in the bill nor does it say who is to make that determination, whether it is to be the Council or the committee.

Second, as I read the bill it applies as well to emergency acts. It requires a 7-day review of emergency acts as well as permanent pieces and, in fact, if Congress goes to recess or adjourns during the period when an emergency act is pending, under the 7-day review provision it would extend that 7-day review provision.

So it seems to me a second problem with the bill is that it tends to negate the effectiveness of the emergency legislation, requiring the same congressional review essentially as with the permanent pieces.

Mr. SINGLETON. I do detect perhaps some misunderstanding about that bill, and I would like to talk to you so we could clarify those things.

The second question I have concerns what is an emergency. There has been some concern expressed by, I know not only the ranking minority member but from other Members, both in this body and in the Senate, regarding just what constitutes an emergency.

DEFINING AN EMERGENCY

I was wondering if you could briefly tell us, Mr. Chairman, how the Council is going to define what an emergency is under these proposed rules that you stated you are about to adopt.

Mr. DIXON. You know the Council, about 3 years ago, did in fact have before it and voted on a definition of emergency which basically went to the charter's definition, health, safety, and welfare of the citizenry and set those standards in more descriptive ways; that is what we are trying to do now.

The actual wording has not been presented to the Council and, therefore, maybe General Counsel might want to address that.

Mr. MIREL. All I want to say is we recognize it is a problem and we are going to see if we can define it better. I would hate to take a

stab at it now because we haven't gotten far along in that process. But I do think it is becoming increasingly clear that unless the Council itself defines emergency with more clarity it may be done for us either by the courts or by Congress.

I think that we do have an obligation to try to do that and we are undertaking that right at the moment.

Mr. DIXON. This ice cream vendor issue, which seems to be used as an emergency action which was not necessary, in fact impacted on the health and safety or well-being of a number of constituents in the District who were in that business at that time during the summer. We had to do what we felt then to try to allow them actions within the marketplace. So you may argue that is not health, safety, or well-being but when you see the impact on the constituents it creates a different perception downtown in the Council Chamber in that community.

Mr. SINGLETON. If the concern here with respect to an emergency is one of concern for the public health, welfare, and safety a question that comes to mind is; Doesn't the Mayor have emergency powers, police powers, that could take care of those instances of threats to the public health, safety and welfare?

Mr. DIXON. I think the answer is clearly yes, but I think the Corporation Counsel is here to represent the Mayor and I would like him to respond as to how they view those powers to be useful in that regard.

Mr. FAUNTROY. Thank you, Mr. Chairman, and Mr. Mirel.

Our next witness is the distinguished Corporation Counsel for the District of Columbia, Hon. Judith W. Rogers, who will testify in place of Mayor Barry, who is unable to be with us this morning.

STATEMENT OF JUDITH W. ROGERS, CORPORATION COUNSEL, DISTRICT OF COLUMBIA, ACCOMPANIED BY JAMES C. McKAY, JR., ASSISTANT CORPORATION COUNSEL, AND GREGORY J. SWARTZ, LEGISLATIVE ANALYST, OFFICE OF INTERGOVERNMENTAL RELATIONS

Ms. ROGERS. I have a prepared statement which I will go through, if I may.

Mr. FAUNTROY. Certainly.

Ms. ROGERS. Mr. Chairman and members of the committee. It is my privilege to appear before this committee to discuss the impact of the recent decision of the District of Columbia Court of Appeals concerning the emergency legislative powers of the Council and the need for curative legislation.

On May 28, 1980, the District of Columbia Court of Appeals, in *District of Columbia* v. *Washington Home Ownership Council, Inc.*, held that the Council is prohibited from passing a second successive emergency act that is substantially similar to a prior emergency enactment

In so doing, this court has underscored, again, the constraints placed on the self-governing powers delegated to the District government under the Self-Government Act.

LEGISLATIVE CONSTRAINT IN HOME RULE ACT

The primary, stated purpose of that act was to "grant to the inhabitants of the District of Columbia powers of local self-government * * * and, to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating on essentially local District matters." (Sec. 102(a).)

That same act broadly provides that the "legislative power of the District shall extend to all rightful subjects of legislation within the District" subject to the same constitutional restrictions as apply to the States and the limitations enumerated in title VI of the act (Sec. 302). Nevertheless, the most recent decision of the court of appeals will, when its mandate becomes effective, place the Council in a posture which dictates that it address legislative matters either with permanent acts, or with single emergency acts, or not at all.

The complex issue thus facing this committee is the extent to which it wishes to reaffirm the stated purpose of the Self-Government Act. Otherwise, the citizens of the District may once again, as before self-government, be forced to look to Congress to address more of their local legislative needs.

IMPACT OF COURT'S DECISION

The District's Charter currently limits the duration of a single emergency act to 90 days. The court's ruling may, therefore, effectively preclude the District from responding to emergency circumstances which endure for longer than this period.

The local legislative experience since the effective date of self-government has demonstrated that it has not always been feasible to develop a permanent legislative response to such a crisis, to provide adequate public notice, to hold hearings, to undergo two readings, and to complete the 30-legislative-day congressional review period prior to the expiration of 90 days.

When the review period is suspended by the adjournment of Congress, it may well be impossible to put permanent legislation in place in twice this period. Since January 2, 1979, the average length of the congressional review period alone has been 54 days. When this period is interrupted by a congressional recess or adjournment, however, the effectiveness of such acts is delayed for many more months.

For example, the Fire and Casualty Act Amendments of 1978, an insurance measure, was signed by the Mayor on August 2, 1978, but did not complete the congressional review period and, hence, take effect until March 3, 1979—a delay of 7 months.

CONGRESSIONAL REVIEW

Although Public Law 95–526, enacted October 27, 1978, shortened the review period somewhat, it still did not vitiate the prospect of lengthy delays occasioned by congressional adjournments. Indeed, currently, any act of the Council that has not completed the 30-day review period before the adjournment of the 96th Congress will be required to complete the period anew during the 97th Congress and will not take effect until sometime in March 1981.

In 1978, representatives of the District government advised this committee that the substantial delay and uncertainty resulting from the review requirement had forced the District to resort to successive emergency measures to fill the often lengthy void until permanent legislation can take effect.

While the congressional response in 1978 did not restrict the use of this procedure, the decision of the court of appeals is that, as used heretofore, the successive emergency procedure is beyond the legislative authority delegated to the Council.

Thus deprived of this procedure, the District will now be unable to respond legislatively to some emergency circumstances that last longer than 90 days; and by the time permanent legislation can be put in place, substantial damage may have resulted.

Although the court intimated that it did "not foreclose the argument" that the adjournment of Congress during its review of a permanent measure similar to an emergency measure in effect might constitute a separate "emergency" justifying the enactment of a successive emergency measure, the court by no means endorsed this procedure.

Moreover, even if the Council could pass successive emergency acts in this situation, it might not be able to fill the void in equally compelling circumstances, for example, where Congress adjourns before a permanent act can be transmitted.

Outlined thus, the seriousness of the basic issue before this committee is clear. From the point of view of the Mayor, either the delegated powers of the District government must be sufficient to allow it to respond effectively and efficiently to legitimate local needs, or Congress itself will have to resume a role that is not in keeping with the basic purpose of the Self-Government Act.

If the Council has no authority to act, then—unlike the citizens of States which have, in addition to State legislatures, local, county, and municipal entities to respond to their needs—the citizens of the District of Columbia can only look to Congress.

The ultimate solution to this problem may be complex and unachievable immediately. But should not the goal be to accomplish a delegation of legislative authority to the District which, consistent with the purpose of the Self-Government Act and the constitutional responsibilities of Congress, is comparable to that of a State legislature, subject only to clearly defined and narrowly construed limitations? There would appear to be good reason to do so in view of the complexities and uncertainties which arise from piecemeal delegation.

FAVORS H.R. 5928

The Mayor of the District of Columbia has testified on several occasions that the congressional review period should be repealed as unnecessary and burdensome. In his view, the best solution to this present dilemma is for Congress to adopt H.R. 5928, or a similar measure, which repeals the prerequisite of congressional review prior to the effectiveness of local enactments.

It is his position that the Federal interest is well protected without this provision. Congress, in section 602(a) of the Self-Government Act, has expressly withheld from the Council's authority certain areas

of legislation potentially affecting the Federal interest, such as acts levying taxes on the United States, affecting Federal functions or property, or affecting the powers or duties of the U.S. attorney or U.S. marshal.

The courts have demonstrated that they are not reluctant to invalidate acts of the Council exceeding its authority under this provision. Moreover, under section 601 of the act, Congress expressly reserved its constitutional power to "enact legislation for the District on any subject * * * including legislation to amend or repeal * * * any act passed by the Council."

URGES REPEAL OF CONGRESSIONAL REVIEW

In view of the existence of these more than adequate safeguard of the Federal interest, it becomes difficult to justify the substantial denial of self-government, and serious impairment of the District's ability to enact legislation responsive to the needs of its citizens, that results from the requirement of the 30-legislative day congressional layover period.

During more than 5 years of self-government, concurrent resolutions of disapproval have only been introduced with respect to a half a dozen Council enactments, out of more than 350 permanent enactments, and only one was disapproved. Therefore, the Mayor would urge this committee to support legislation repealing the requirement of a layover period.

URGES RATIFICATION OF PRIOR EMERGENCY ACTS

With respect to the need for legislation to respond to the immediate impact of the court's decision, congressional legislation ratifying the prior successive emergency acts of the council would be greatly desirable.

The court did not indicate whether its ruling was prospective or retroactive. If it were to be applied retroactively in subsequent litigation, however, it would have disastrous consequences on the District government and on numerous persons who relied in good faith on the validity of such acts. Based on those acts, loans were made, contracts were entered into, taxes were levied, elections were held, and salaries were paid. The result of the subsequent invalidation of these actions would be catastrophic; the courts would be flooded with litigation for years. In order to avoid such an eventuality, Congress should enact curative legislation providing that no prior emergency act of the Council shall be deemed to be invalid solely because such act was a successive emergency act. This would preserve the reasonable expectations of innocent parties relying on those acts and prevent a tremendous expenditure of governmental and private resources.

In conclusion, I want to express the Mayor's appreciation for this committee's concern for the serious impact on the government and citizens of the District of Columbia of the recent decision of the court of appeals. We share the view that congressional legislation is needed to address the short-term and long-term problems ensuing from the decision.

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The immediate problems could be resolved by the legislative ratification of emergency acts of the Council thrown into doubt by the decision. However, the underlying, complex issue before this committee, which is even more crucial, should be resolved, at least in part, by the elimination of the 30-day congressional layover period that delays and renders uncertainu the effectiveness of all permanent local enactments without affording, as a practical matter, any additional protection to the Federal interest.

Thank you for this opportunity to testify. I will be pleased to respond to questions.

Mr. FAUNTROY. Thank you, Ms. Rogers, for a perceptive statement also.

You were here when the chairman outlined the steps which the Council has taken which by June 17, in his view, would render the previous acts of the Council ineffective. I wanted you to evaluate, in light of your suggestion, that Congress take further specific action to indicate that no prior emergency act should be deemed invalid.

Ms. ROGERS. Mr. Chairman, I think there is a very complex issue there. In place now are procedures, rules, requirements which, while the court has stated its mandate, have not been amended.

I am concerned about relying on a footnote that is inconclusive at best to justify what it seems clear the Council is saying the Council of the District does not have the authority to do.

IMPACT OF COURT'S OPINION

I think this decision does have a very dramatic impact on the legislative power delegated to the local government. I think the courts majority opinion is quite clear in saying that the Council may enact an emergency act for 90 days or else has to go the permanent route or the citizens look to the Congress.

I think that the court recognized in the course of the oral arguments some of the dilemmas faced by the District government in a situation where you do have a limited delegation of authority. The Congress, understandably, despite your support and interest, and the chairman of the committee, is simply not in a position to respond promptly to local matters. The thought that the Congress of the United States prior to leaving in the summer is going to address a local ice cream vendor issue is unrealistic from the point of view of the expectations of the local citizens, it seems to me.

On the other hand, one can argue that there are procedures locally which could be tightened up and streamlined but I think the problem is how do you provide a responsive legislative process that cannot always predict and accurately calculate the effectiveness of its legislation?

Mr. FAUNTROY. I guess in sum you feel the steps underway are not adequate and, to be sure, we ought to go with specific legislation making those prior emergency acts successive?

Ms. ROGERS. Yes.

Mr. FAUNTROY. There are several questions that I would like to pose to you that have been posed in the past, and it would be useful to our committee if you would restate them in our continuing effort to have a complete record. If you feel additional clarification can be provided by more thorough written reply, please indicate that to me also.

EFFECT OF 30-DAY CONGRESSIONAL REVIEW

What effect does the 30-day congressional review period have upon the District's lawmaking process?

Ms. ROGERS. I think, Mr. Chairman, as the Chairman of the City Council indicated, it has had that uncertainty that the Congress in 1978 tried to correct by restricting the 30 days not to legislative days that had previously been defined when the Home Rule Act was passed, but simply calendar, 3-day recesses, et cetera.

Nevertheless, consider what will happen this year if the Congress goes out permanently at the beginning of October. Any Council legislation will have to be presented to a new Congress which presumably will come in around the third week in January.

Therefore, any permanent legislation of the Council, assuming the same type of meeting a legislative pattern that has existed ever since home rule was enacted, it is unlikely that permanent legislation could become effective until the end of March. That is also a longer period than even the 180 days contemplated here. It seems Congress would want to consider what the Chairman added at the end, some automatic continuation period as opposed to this absolute numerical limitation. It is simply very difficult to calculate.

On the other hand, Mr. Chairman, knowing the work done and the committee and attitude, I believe that the Home Rule Act and its purpose was an intentional decision by the Congress that it really did want to get out of local work; that where there were legitimate Federal interests, however Congress defined Federal interests, Congress would step in and could act accordingly. And I think that based on my personal experience, the relationship between this committee and its counterpart in the other body and the District government has been exemplary in showing how successfully this process can work.

I think both of us are aware that when controversial matters are pending before the City Council, the Members of Congress hear about that. In turn, either members of this committee or the staff contact people in the City Council or their staff or the executive branch so that matters are not proceeded on where there is not some understanding there may be some concerns that need to be addressed before final action is taken. In some cases they are addressed and in other cases the local decision is made to present the matter to Congress and Congress has disposed of things in various ways.

I think there has been a very strong supportive relationship on the Hill to the legislative process in the local government. I would hope that ultimately we can achieve the type of thing that your legislation proposes because I think that the experience will be that when Congress needs to protect that interest it considers paramount, it very clearly has the authority to do that and does so.

Mr. FAUNTROY. I have just one final question.

H.R. 5927

One of the bills before us today, the Eagleton bill, H.R. 5927, would extend the period in which emergency acts would be in effect from 90 to 180 days. From your experience under what particular conditions could you foresee that a period beyond 90 days would be necessary for emergency acts?

Ms. ROGERS. In my statement I tried to outline what I thought was the concern and I think the Chairman of the Council indicated it.

As you know, Mr. Chairman, for example, the whole question of what to do with condominium conversion—no one has the answer. It is simply not a matter that even a legislature which may have a fairly clear picture of which way it wants to go, will necessarily want to proceed, in a period less than 90 days, to permanent legislation which can become effective, if it is an issue on which people have diametrically opposed positions. One could argue necessarily the legislative process should allow for consideration of all points of view; doing whatever amendments or adjustments in that period is an unrealistic timeframe.

It is further unrealistic given the congressional schedule over which the city, of course, would have no control.

Mr. FAUNTROY. Thank you so much for your testimony. There are questions counsel for minority would wish to tender the witness. Mr. Singleton.

Mr. SINGLETON. Thank you, Mr. Chairman.

MAYOR'S EMERGENCY POWERS

I would like to ask you the same question that I put to the panel preceding you concerning the police powers of the Mayor. As you probably know, the McKinney proposal would do away with the emergency power of the Council as it currently is practiced.

What it would put into place would be a mechanism where the Council, declaring the existence of an emergency, by two-thirds vote of the members present and voting could then on a single reading adapt legislation and, once signed by the Mayor, could be sent to the Hill where within a 7-day period, if either committee responsible for District of Columbia affairs found there was no Federal interest involved in that legislation, could go into effect immediately.

By the way, thinking of a recent example, when we were confronted with the crisis in the city about lending because of the usury ceiling. City Council actually passed legislation one day and came to us on the next day and we held a hearing on it, reported it to the floor—very fast action. That is the kind of thing we were contemplating. That we could act very fast in fact means we could have something in effect in 48 hours, presumably.

The point is, are there situations that would not be taken care of by that type of legislative action that could not be taken care of by the Mayor's police power? That is to say, if we are concerned here about emergencies which relate to public health, safety, and welfare would not the Mayor be empowered to deal with those problems under his police powers?

Ms. ROGERS. Mr. Singleton, I think we would like to provide something in writing to the committee and to you in response to that question. I think the Mayor's emergency powers exist but they are limited and particularly in a number of areas where legislation is on the books, certainly emergency powers would be limited to the extent to which there could be any amendment.

The Mayor does have some emergency powers that exist as a result of the reorganization plan and the transfer of powers, under the Home

Rule Act from the appointed Mayor to the elected Mayor as well as of local action enacted by the City Council.

The gasoline shortage situation existed. The question was what emergency powers did the Mayor have? How far could he go? The purpose of the local legislation was to make it clear that if the Mayor needed to do an odd-even system for gasoline sales, he would have the authority to do so.

I think we would like to examine a little more closely, though, the implications of your question. I gather the notion would be that with the 48–72 hour period for the emergency power the chief executive could handle it. I think we would like to look at those closely.

Mr. SINGLETON. It would be greatly appreciated. I know the ranking minority member has expressed an interest in the emergency powers of the Mayor on previous occasions and we would like to get anything that you could provide on that and give us an opportunity to take a look at that as well.

Thank you, Mr. Chairman. I have no further questions.

Mr. FAUNTROY. Thank you again.

We are going to take a 10-minute break prior to going to a very distinguished panel.

[Brief recess.]

Mr. FAUNTROY. The hearing on the impact of the District of Columbia Court of Appeals opinion decided on May 28 is reconvened, and at this time we are very pleased to have a very distinguished panel of witnesses headed by the distinguished former Member of the Congress and member of the District Committee, whose service on the committee, in the Congress, and public life has been exemplary. It is a real pleasure, Congressman Rees, to welcome you to that side of the table and to eagerly await your wisdom on the subject before us.

I am pleased to welcome as part of the panel likewise Jacques DePuy, who was counsel to the subcommitte during the very formative days of our home rule legislation; and Attorney James Christian, who likewise served as counsel to the minority of this committee in the 95th Congress.

Congressman Rees, if you will be kind enough to leadoff in any way you see fit.

STATEMENTS OF HON. THOMAS M. REES, ATTORNEY AT LAW; JACQUES DePUY, ATTORNEY AT LAW; AND JAMES M. CHRISTIAN, ATTORNEY AT LAW

STATEMENT OF HON. THOMAS M. REES

Mr. REES. Mr. Chairman, it is a pleasure to be back here again and before your subcommittee. I wanted to say hello to you last Friday. You were performing a marriage in the foyer of my building and I couldn't get through the crowd. It just shows you when my minister married me about 20 years ago there were about 10 people around. I think I made a wrong choice of ministers. I needed a crowd because I was in office at that time.

It is a pleasure to discuss the home rule.

This is one of the few times a court has ever interpreted what I wrote into law along the lines of what my intent was at the time that I offered the amendment. Usually it comes out just the opposite.

In the Home Rule Act we were trying to structure an act that would give as much power as possible under the Home Rule Charter. One of the problems with the legislative process is the legislative process can be very slow, especially is emergency situations.

Generally the legislative process encompasses three readings of the bill: the first reading when it is introduced, the second reading at a kind of committee level and then the third reading, the final reading, where City Council, State legislature, or the Congress makes the final decision.

Then it goes to the Chief Executive Officer for either approval or veto.

You will find in a great many jurisdictions they have a provision for emergency legislation where it is really impossible to wait a long period of time to go through the normal legislative procedure. This is generally done when there is a real emergency and the requirement generally is there be a higher vote, for example, two-thirds vote in each house of the California Legislature.

When you do that you automatically waive your statutory time periods. When we were discussing home rule and power of the city, I thought it would be good to have emergency powers for the City Council and this was what the amendment was when we amended the charter, that the City Council could pass 90-day emergency legislation by a two-thirds vote and the signature of the Mayor.

The 90-day limitation was put in there as a restriction on the powers of the Council and the Mayor. The purpose of having three readings of the bill is to give the general public the opportunity of reading the bill and testifying and giving their views to their elected representatives. It is a protection that generally is found in all legislative bodies.

So we felt when you give a jurisdiction the power to pass emergency legislation without hearing or without people having an opportunity to read the legislation it should be done with a very short leash and this is why it was 90 days. It was felt if you had a permanent crisis, for example, this case was developed on the problem of condominium conversion, in the District of Columbia where you don't have as many rental units as are needed by the people who live here: we have a lot of older people and poor people—it is a crisis but really it is a problem that is going to exist as long as there are condominiums and as long as there are rental units and as long as there is demand for rental space.

I can see voting for a 90-day statute or municipal ordinance to solve the problem and give the Council some time to hold normal hearings but I certainly can't see coming up with successive 90-day resolutions.

They could come up with a 90-day resolution, 3 months, and then come up with another one and another one and another one and you

could run this into year 1, 2, or 3; and really the people would have no way of dealing with it other than to choose a new City Council.

THIRTY-DAY CONGRESSIONAL REVIEW

About 3 months after we dealt with the legislative powers under the Home Rule Act, we were getting some heat on the bill. As you know, it was fairly controversial during the period we were working on it. It was more or less decided to make the bill more salable to Congress that there be a 30-day layover of all proposed municipal ordinances.

The reason for this was that the Congress had governed the District of Columbia for years and here all of a sudden was a complete new change—we are going into home rule.

You were there, Congressman, and you remember those of us who finally approved the 30-day layover did so reluctantly because we felt if we are going to have home rule we should have home rule, and that Congress has many other ways to assert itself if it feels that the Federal area is being invaded by the District of Columbia City Council.

But at that time it was felt that the bill might be in jeopardy. As you know, they took out all the criminal law provisions and they had to be dealt with several years later. We did compromise on the 30-day layover and that is what is now in the charter.

In terms of looking for solutions I would hope that you would not change the emergency legislation part of the home rule bill. I think it is necessary to have a two-thirds vote. I think it is necessary that emergency legislation be on for no more than 90 days. Again, it is emergency legislation.

You might consider a change of the congressional layover. You see, this is what hurts you on your emergency legislation. By the time you go through the three readings of the bill, the approval by the Mayor and a 30-day layover in the Congress, you are bumping up against that 90 days. But if you keep increasing the 90 days you find that your legislation really isn't emergency, it becomes permanent.

I would suspect that you could get into a lot of trouble with the courts as to the interpretatiton of validity of emergency legislation that has been going on for 6 months or a year.

The city has rules and regulations to interpret that, people make commitments on it and then they find it is cut off. Usually in temporary legislation as in temporary Government programs, you think they will die at the expiration but generally I think they find a new life.

WOULD WAIVE 30-DAY REVIEW

This is more or less my feeling. If you can get legislation through two Houses of Congress that would waive the 30-day layover, I suspect that would be the best solution, as long as there is a substantial Federal payment. As long as you have oversight by two policy committees and two appropriation committees you probably don't need a 30-day holdover period.

FAVORS OVERSIGHT OF COUNCIL ACTS IN PROCESS

I would think since the major function of the two policy committees is an oversight function you should look at proposed ordinances that are starting to move through the process. A proposed ordinance takes a month or two. It is introduced and people give speeches and the staffs start working. At this time if you see something that obviously invades the Federal prerogative, the one that the late chairman always dealt with, starting the taxi zones from the Capitol, but if all of a sudden they decided they didn't like that and wanted to go to meters, maybe some of the people that enjoyed that taxi ride would say this invades the Federal prerogative and they would go talk to some Senator to make sure it was brought out in the appropriations process.

There are a lot of things you don't have to put in the statute but you can, as the oversight committee, anticipate these problems in talking to people downtown.

They know since they are dependent on the Congress ultimately, that they can't go too far away from what the congressional intent might be.

Mr. FAUNTROY. Congressman, I certainly want to thank you for your contribution to the hearing this morning. You bring to it a unique value in that you were, in fact, the author of the amendment on the emergency powers. It is helpful to us to make clear that you had the 90-day two-thirds vote requirements voted upon prior to the decision to move to a congressional review period in which two thing have combined to create the problem that we have today.

Congressman Rees, since you were one of the authors of the Home Rule Act, would you want to define for us, just for the record, or characterize the primary function of the Home Rule Act in relation to the role of the Congress and the purpose of congressional review?

Mr. REES. As I mentioned before, I didn't believe that congressional review was necessary. I might ask you a question. Since the Home Rule Act, how many ordinances have been reviewed by the Congress which were subsequently vetoed by the Congress?

Mr. FAUNTROY. Only one and that was the Chancery Act about 3 months ago. That demonstrated Congress can act if it feels the Federal interest is endangered, and that action could have taken place without the review period.

Mr. REES. You know the District Committee went through a great change in terms of personnel. For a while it was always anti-home rule and then it became very pro-home rule and it was the consensus of both sides in the District Committee at that time we should try to give the District the longest leash possible because it was home rule.

As I say, the 30-day layover came really 3 months after I introduced my amendment but about 1 month after we finished writing the bill. It was a compromise to get things through. It was felt by many of us it really wouldn't hurt. A 30-day layover is not fatal to home rule. It is kind of an insult, an a way, to the people of Washington who vote for their elected representatives, to be second-guessed by the Congress of the United States. But other than the indignity, as you can see, it has not been that oppressive.

ALTERNATIVE SOLUTIONS

One problem is the interplay with the time period of emergency legislation and the regular legislative process. You could do several things. You could do away with the congressional review if you found that was too difficult. You could set up another type of congressional review so there is a presumption it is all right until an action is taken. I suspect if the District Committee were so incensed about an ordinance that it had a joint resolution, that the other District Committee would go along with it. That would be enough notice.

Mr. FAUNTROY. We certainly thank you for that contribution. Your remarks are certainly consistent with some of us who felt it necessary to introduce legislation to resolve this—for my part, by eliminating the 30-day period, and our distinguished colleague, Mr. McKinney, has a proopsal to substantially shorten it.

There is one proposal to resolve the question by extending the period to 180 days for the effective emergency legislation. I take it from your comments that you would not be in favor of that.

Mr. REES. I really think that should be a short leash. The public has not time to speak out. It is passed. You can have a crisis now at this time, a quarter after 11, and with emergency legislation, you can have an ordinance on the Mayor's desk by noon and signed by the Mayor.

So it is something that really needs to be circumvented. You have 90 days. That is a substantial period of time.

Mr. FAUNTROY. Thank you.

Does counsel for the minority have any questions?

If not, thank you so much. I know you have other business to take care of and I certainly would not wish to detain you, particularly inasmuch as you are under no limitations as relates to outside earned income.

Mr. REES. Very good.

Mr. FAUNTROY. Now we will hear from Jacques DePuy who is certainly a most valuable staff person when we were drafting the Home Rule Act in 1973, and who is in private practice and has the greater wisdom working in the District of Columbia as a resident.

STATEMENT OF MR. JACQUES DePUY

Mr. DEPUY. Thank you and I appreciate your kind personal remarks. In sitting at this table, as opposed to up there with the staff, one observation comes to mind, and that is perhaps you should have a clock behind the chairman in addition to being behind the witness so the witness can see how much time he or she is taking and be cognizant of time restraints imposed by the committee.

I do have a prepared statement which I delivered and which I will just summarize. I won't read from it.

COUNCIL'S ABUSE OF EMERGENCY POWERS

In setting forth my views on this subject in general, my assessment is as follows: The District of Columbia Council, in my view, has

abused its authority by using its emergency powers far too frequently and for nonemergency situations.

The Congress intended the emergency authority to be used sparingly.

Irrespective of congressional intent, for public policy and due process reasons, the emergency powers should be infrequently employed.

Remedial legislation is necessary by the Congress.

I have cited one example in my remarks which I won't go into any great detail of an emergency act which is not a frivolous kind of bill. It is not one people poke fun at like the ice cream vendor's legislation.

The one I have cited is an emergency conversion bill which affects the conversion of apartment buildings to transient facilities. This is a very serious subject that is very complex and controversial and it is one that many members of the community feel very strongly about.

I have cited this one even though I believe it is a tough one to cite because I feel that it does not qualify for an emergency of the type that is normally contemplated by the Administrative Procedures Act or by most State or other statutes.

It does not qualify as something which has an imminent danger to the public health or safety.

Furthermore, this one catches my attention because I believe it may from fact conflict with one of the provisions of the charter and I have cited that in my testimony.

I cite that because for a matter of that magnitude where strong interests and rights are at stake, the Council and the Congress have to be especially sensitive to that kind of action.

AMENDMENTS PROPOSED

Moving on to my recommendations and the committee staff had asked me to make some recommendations on this subject, let me cite these. First, I believe the Congress should amend the charter, and the District of Columbia Council should further amend its rules, to establish parameters for the existence of emergency conditions.

DEFINING EMERGENCY

It is a difficult subject to define but I think it is a job which has to be undertaken, and I think this definition must be limited to iminent or immediate dangers or extraordinary situations and should not be used in a general legislative context.

EXTEND 90 DAY PERIOD

The second recommendation is that the period for the effectiveness of an emergency I believe should be extended from 90 days, not necessarily to 180, which has been recommended, but to 120. This would square with the District of Columbia Administrative Procedures Act.

I think it would give the Council a little bit more time to enact permanent legislation giving it the time to get the input which I believe is essential to have the kind of test of time and test of use in the open legislative process which the Council goes through and at the same time would allow for genuine emergencies.

I am sorry Mr. Rees left. I don't recall why the Congress chose 90 days as opposed to 120 but my recommendation would be to extend it to 120.

REQUIRE TWO-THIRDS VOTE

My third recommendation is I believe the Council should be required to pass the substantive legislation where it is declared an emergency by two-thirds. Currently, as I understand the emergency resolution is adopted by two-thirds but the substantive piece can be adopted by a simple majority.

Most State legislatures adopt legislation on an emergency nature by two-thirds vote and insert in the preamble the findings declaring the emergency.

I think a two-thirds requirement is wise and I think it ought to apply for both ends of the emergency declaration.

CHANGE EFFECTIVE DATE OF COUNCIL ACTS

Finally, my fourth recommendation is that I believe the effective date for all District of Columbia legislation that is nonemergency legislation should be established by the Congress or by the Council to be a date which occurs no sooner than 90 days after publication of such acts in the District of Columbia Register.

This practice, again, I believe, would square with what is done in most State legislatures. To me it has some important advantages. Whether Congress is in or out or whatever, I would suggest a 90-day requirement for delay in effective dates would essentially remove the uncertainty which now exists in a layover period.

Second, it would have the advantage, I believe this is an important element here of giving the public notice of changes in law, of showing that the Council is very serious in amending what we refer to as municipal ordinances, it is the same thing as the Congress enacting law for the District. It is the governing law of the District of Columbia.

As such I think the public has to be given some notice of what these changes in the law are. I think that is fundamentally fair.

Third—and I can't overemphasize this enough—I believe this kind of solution would give the agencies and departments sufficient time to consider and adopt rules which implement laws adopted by the Council.

In my practice of law I am confronted daily with agencies that have no regulations or which have inadequate regulations which define or clarify or set forth the rules and regulations which underpin this legislation, and I think it is very important for an orderly process of law in the administration of government that agencies have sufficient time to react to changes in law and to adopt regulations which implement the law.

That concludes my prepared statement, Mr. Chairman. One personal note I must make: Perhaps my remarks on this subject might be regarded as being fairly strong. I want the record to know that, as you do yourself, that I am a very strong believer in home rule. I fought with you and the other members of the committee to get the strongest home rule we possibly could.

I don't think my criticisms or remarks are anti-home rule. My objectives are to provide a strong level and governmental basis for the way in which our laws are adopted.

I would support the elimination of the congressional review period. I agree with Mr. Rees that was basically a political compromise adopted for obvious reason to help pass the Home Rule Act.

I think it has caused considerable problems and if there were a 90-day period, as I have suggested for delay of the effective date, Congress would have in most instances 90 days to review the legislation.

If Congress is in recess, as occasionally happens every 2 years, for a period which might be longer than 90 days, I believe the Congress could come back in and adopt remedial legislation fitted to at a later period. I don't think that is sufficiently a problem that the Congress would be waiving any rights or would not be diligent in whatever responsibilities it has and politically I think the Congress ought to stay out of District legislation as a principle in any event.

But m suggestion, I think, would provide for congressional review without having this layover period.

I wanted to make those personal remarks in addition to my prepared statement.

Thank you very much.

[Mr. DePuy's prepared statement follows:]

PREPARED STATEMENT OF JACQUES B. DEPUY, ESQUIRE, REGARDING THE EMERGENCY POWERS OF THE CITY COUNCIL

Mr. Chairman and members of the Committee, I am pleased to have been invited to appear before you this morning regarding the emergency powers of the D.C. Council.

As the Chairman knows, I was subcommittee counsel in 1973 and 1974 to the House District Committee Subcommittee which held the hearings on and drafted the D.C. Home Rule Act. I am currently practicing law in the District of Columbia and specializing in administrative and municipal law. The bulk of my practice is before the D.C. Zoning Commission, the Board of Zoning Adjustment, the Rental Accommodations Office, the Joint Committee on Landmarks, D.C. executive departments and other District agencies.

COUNCIL'S ABUSE OF EMERGENCY POWERS

My views on the subject before this Committee can be briefly summarized as follows:

The D.C. Council has abused its authority by using its emergency powers far too frequently and for non-emergency situations;

The Congress intended the emergency authority to be used sparingly;

Irrespective of congressional intent, for public policy and due process reasons, the emergency powers should be infrequently employed;

Remedial legislation is necessary by the Congress.

A recent action by the Council, the adoption of EA3-124, the Rental Housing Conversion Regulation Act of 1980, can be used to illustrate my position.

This legislation, as with many other so-called emergency measures, was adopted with no advance notice of the intended action to affected parties, with no hearing or other opportunity for the public to present its view, and with little or no meaningful debate in the Council. Yet, in my view, this legislation was not required by any true emergency conditions. There was no imminent health hazard or danger to the public safety. There was no extraordinary or exceptional set of circumstances. The subject matter addressed—that of conversions of apartment buildings to transient facilities—was not a new one of which the Council was unaware.

Most troubling about EA3-124, in my opinion, is that is appears to violate provision of the Home Rule Charter (Sec. 494(e) which vests exclusive zoning

powers in the D.C. Zoning Commission). Moreover, at the same time that this legislation was not subject to any public imput from the local community, it did not receive any congressional review.

AMENDMENTS PROPOSED TO HOUSE RULE ACT

To correct this abuse by the Council of its emergency authority, I suggest the following:

SPECIFICS IN EMERGENCY LEGISLATION

1. The Congress should amend the Charter, and the D.C. Council should further amend its rules, to establish parameters for the existence of emergency conditions. These should relate to imminent or immediate dangers or extraordinary situations, such as health or public safety hazards. (The emergency powers should not be used to extend existing laws—such as the current rent control law—when the Council knows, a year or more in advance, that such law is due to expire.)

EXTEND EMERGENCY ACT TO 120 DAYS

2. The period for the effectiveness of an emergency should be extended from 90 days to 120 days to be consistent with Sec. 1-1505(c) of the D.C. Administrative Procedures Act (APA).

COUNCIL VOTE OF TWO-THIRDS FOR ADOPTION

3. The D.C. Council should be required to pass emergency legislation by a two-thirds vote. Currently, the Council adopts a resolution declaring an emergency by a two-thirds vote but passes the substantive legislation by a simple majority.

CHANGE IN EFFECTIVE DATE OF LEGISLATION

4. The effective date for all District legislation (i.e., non-emergency measures) should be established by Congress to be a date which occurs no sooner than ninety (90) days after public of all such acts in the D.C. Register. This practice would square with that of most state legislatures and many city councils. It would have three obvious advantages: (a) it would eliminate the uncertainty of the current effective date for all legislation (caused by the vagaries of the congressional layover period); (b) it would put the public on notice of all changes in laws (and might promote more stability in the law); and (c) it would allow the departments and agencies to develop rules to implement the legislation before it becomes governing law.

I hope these observations and recommendations are helpful to the Committee. I would be pleased to answer any questions.

Mr. FAUNTROY. I certainly want to thank you and especially for the recommendations and the spirit in which they were given. We know from your work in the past, certainly you are fully supportive of our self-government issues in the District of Columbia.

I am pleased that you have indicated that you would like to see the congressional review period dropped altogether. I just have one question in respect to the 90-day fixed period proposal.

Let me make sure I understand that you mean When the Council and the Mayor enacted legislation, it would be understood the law would become effective 90 days hence, the review period notwithstanding.

Mr. DEPUY. That is correct.

Mr. FAUNTROY. Would you eliminate the 30-day layover period and, therefore, make the act applicable upon passage? Would that create problems in your view in terms of the advantages that you suggest for the 90-day period?

Mr. DEPUY. Yes. I believe that that would not provide sufficient time for notice to the public, notice to affected individuals, and would

not give the agency sufficient time to do the kind of work which I think must follow after major changes in the law so whether that period is 90 days or some other period, I think there ought to be some period during which these changes in law would not be effective and could be studied, reviewed, and implemented by the agencies.

Mr. FAUNTROY. Are there questions counsel from minority would wish to ask?

We do have a person who comes with a very unique and perhaps unprecedented posture to the table inasmuch as he served not only on this committee as counsel reviewing these matters, but has had the privilege of serving likewise on the other side with the City Council, as counsel to the committee, and now is with a very prestigious community-oriented law firm.

Mr. Christian, it is a real pleasure to welcome you and we eagerly await your recommendations.

STATEMENT OF JAMES M. CHRISTIAN, ESQUIRE

Mr. CHRISTIAN. Thank you very much, Mr. Chairman, I am indeed honored to appear before you this morning. I am somewhat humbled by the very postures in which I have been afforded the opportunity to appear and to render public service, first here and then down at the Council, and I regard my appearance here this morning as a continuation of that, just from the private sector perspective.

RESTRICTIONS OF HOME RULE ACT

Preliminarily, Mr. Chairman, I feel somewhat compelled to sort of digress from the subject matter of the hearing to indicate a personal concern that is also I think a professional concern from the perspective of being a resident of the District of Columbia and a long time supporter of home rule for the District.

I think the Home Rule Act itself, given the compromise nature of that document, places tremendous governance burdens on locally elected officials charged with its implementation. Therefore, I feel the act severely restricts in its present form local decisionmaking, while it subjects local officials to a standard of public accountability which in large measure I think cannot be satisfactorily met due to the strictures the Home Rule Act itself contains.

I make this observation because I feel strongly that not only should the subcommittee be addressing the very critical issue which we are considering to do, but that the time has certainly arrived when the committee and subcommittee and the Congress should be giving very careful consideration to what possible changes should be made in the Home Rule Act so that locally elected officials can in reality do a better job of governing the District of Columbia.

Absent such a review and what I hope will be a genuinely enlightened response, it seems to me it will only be a matter of time before the agenda of those who would be opposed to self-government and increased self-government will be achieved I make that objection especially subsequent to my tenure as General Counsel to the Council of the District of Columbia.

It was a true eye-opening and enlightening experience to have to hion legislative responses to pressing analytical problems with the

backdrop of all of the considerations and variables that went into the formulation of the Home Rule Act, the independent sort of attention that still has to be given to the inner workings of the Federal interest, the inner workings of the previous statutory enactments.

So I think we really need in a cooperative partnership effort to take a critical look at the present configuration of the Home Rule Act with the view to making some statutory amendments which in effect will make its operation less cumbersome, less restrictive, and provide locally elected officials with a greater degree of flexibility in fashioning what they consider to be reasonable and responsible responses to the problems facing the people of the District of Columbia.

Mr. FAUNTROY. Mr. Christian, I certainly want to thank you for those very perceptive and incisive comments based on substantive experience on both sides of this question. These are comments which I think could be the most valuable that this Member has heard in this period of budget crisis and in a period when people generally don't understand how frustrating it can be to have to operate with responsibility for governance and not having the authority to carry out that responsibility. So I do take particular note of what you have said. I hope those who have responsibility to report to the public what went on here will take due note likewise. Now, let's get to the subject at hand.

Mr. CHRISTIAN. Thank you, Mr. Chairman.

I must honestly indicate that I went through a change in position basically with respect to an assessment of what the Congress intended when it adopted the 90-day provision with respect to the emergency powers of the Council. Upon arriving at the Council, I had the good fortune of reading the learned views of former Corporation Counsel to the District of Columbia. Mr. John Risher and taking those into consideration. I also had counsel and advice with former Chairman of the Council, Mr. Sterling Tucker, and also with my predecessor, Mr. Wells, in terms of the operations of the Council and the practical impact of having to consider legislation against a backdrop of the strictures and sort of limitations on the Council and the legislative process as set forth in the Home Rule Act.

After having been at the Council for a short while, I adopted a pragmatic approach to the consideration of legislative measures which the members felt were needed to address problems presented to them.

We counseled with the membership in terms of indicating our concerns about the eventual possibility of a challenge to some of the actions taken, and I think the members were in large measure responsive to the concerns which we advanced.

We did not issue any formal opinions on the question of the emergency powers of the Council, but felt that the members themselves were sensitive to the scrutiny that the exercise of the emergency powers was going to be subjected to, and I think the way the Council performed during my tenure as General Counsel in large measures reflected that sensitivity.

FAVORS DELETING 30-DAY REVIEW

I feel that the current congressional review period, the 30-day layover period, should be eliminated across the board in terms of all legislative measures adopted by the Council, but in the face of a possible

political reality which I think you all must recognize, I would support and in effect recommend that if we do not get to the point of an elimination completely of the 30-day review period for all legislative measures, that we at least start with the present Home Rule Reorganization Act; namely, powers of the Council when it came to the adoption of legislative measures which as some of you may recall or have reason to know were not submitted to the Congress for its review, in effect in the nature of regulations, imputation of statutory provisions. The council now does quite a bit of that.

I think that could be broadened, but at least that range of legislation could be specifically eliminated from the congressional review period. I think that could be the starting point and then over time other areas could be added.

Let me hasten to add that I make that statement in conjunction with my initial statement, that if we proceed to do the sort of critical analysis of the Home Rule Act I think that of itself would entail a substantial restructuring of the local government-relationship to the Congress specifically in the area of review of the legislative enactments.

FAVORS 180-DAY EMERGENCY ACTS

Secondly, with respect to the question of the duration of the period of emergency enactments, I feel that period should be expanded to 180 days and I say that from the perspective of the practical reality of legislative enactment at the local government level. The process that is now in place in the council I think certainly could be streamlined. I think the process by which the hearings are scheduled, the consideration by the committee of the whole, the ultimate adoption by the Council at the first and second reading could be substantially reduced without sacrificing adequate and sufficient notice to the public as well as an opportunity to be provided for public input.

COUNCIL PROCEDURAL CHANGES

We, before I left, had given preliminary consideration to the adoption of a consent calendar sort of operation wherein a substantial portion of legislation could go by not violating the Home Rule Act, read in the same form twice but at least eliminating some of the other Council-imposed processes before it was finally adopted.

I would hope that the Council under the new leadership would take a serious look at that. Absent that, I think we need to expand the 180-day period and at the end of that period of time if we have a recess situation we would have the emergency enactment continued up until the point where superseding permanent legislation would in effect become law.

I think that is along the lines basically of the proposal you have made with respect to a new treatment of the emergency powers of the Council.

The question, it seems to me, of having the Council streamline its procedures, is one that can be adequately and I think very readily addressed by the Council. There is nothing in the Home Rule Act which I think unduly restricts the Council in streamlining its own

procedures. There is not even the requirement that a hearing be held in terms of the Home Rule Act requirements except that the Council now, when it does have a hearing, must give notice and that triggers a lot of other processes that could be streamlined.

I don't think there is a need for congressional action beyond the possible extension of the 180-day period and also the possible elimination of the 30-day congressional review.

Other than that, I see no need with respect to the legislative process for any more definitive action on the part of this committee at this point in time except within the context of my general concern that there needs to be an overall review of the inner workings of all aspects of the Home Rule Act.

Mr. FAUNTROY. I thank you, Mr. Christian, for very helpful testimony. I have no further questions of you.

Do you have questions?

Mr. SINGLETON. I have one question, Mr. Chairman.

Mr. Christian, you stated that you thought one thing we might do would be to go back to the reorganization plan No. 3 in 1967. Here would we be talking about things like alley closings when we speak of regulatory actions?

Mr. CHRISTIAN. Precisely.

Mr. SINGLETON. Avoid the necessity of going through the regular order for that?

Mr. CHRISTIAN. Precisely.

No question in my mind that Congress really has no interest and no role to play in something of that nature. That is just one example of the kinds of things that were done prior to and certainly should not be the object of congressional review.

Mr. SINGLETON. Do you have in mind something specific with respect to the possible amendment to the Home Rule Act outside of the congressional layover period and emergency layover process when you stated perhaps there might be some need to take a look at that document?

DISTRICT'S BUDGET REVIEW

Mr. CHRISTIAN. One that probably in the face of the current situation might very well trigger more delay and review than I would hope, the whole question of the budgetary process for the District of Columbia in the face of the situation we are facing now some of which would not move as rapidly as I would hope, but I think the Congress itself should turn loose the process of development and implementation of the District of Columbia budget and that in fact the Council should perform the role that the appropriating committees now perform in terms of the review and final recommendation of what the District's budget should be.

It seems to me that when you talk about having over 75 percent of the revenues that are in effect utilized to finance the budget generated from local sources, those funds should in no way be subject to the kind of vagaries of congressional intervention in development of the budget that they currently are.

Mr. SINGLETON. Thank you, Mr. Christian.

I have no more questions.

Mr. FAUNTROY. Do you have any questions, Mr. Lee?

ALLEY CLOSINGS

Mr. LEE. You suggested perhaps emergency legislation should really be confined to early clearly enunciated emergencies and that perhaps the enactment of the Council which might become effective 90 days after publication in the District of Columbia Register, there are a number of actions, among them being alley closings which are generally done on an emergency act basis at present. Those alley closings have very substantial economic consequences for all the parties involved.

How would you propose that be considered in your legislative scheme?

COUNCIL PROCEDURE

Mr. DUPUY. Following up Mr. Christian's process, I think there are processes internal to the Council which can speed much legislation through the local processes faster than is now done.

For instance, I believe the Council only has 1 legislative day per week. The Council could have 2 or 3 days during the week.

I believe the committee of the whole has basically a technical and legal review process which might be amended.

There are many others that people who have more experience than I with the Council process are aware of that could help important pieces of legislation move through the Council process much faster.

I am aware of the situation with the alley closings bill and how long they do take. I think primarily the Council has the power to move those along much quicker.

Mr. CHRISTIAN. If I might comment on that, it seems to me that to have the 90-day program as proposed by my colleagues implemented would really create some mischief, as well as confusion.

OPPOSES DELAY IN EFFECTIVE DATE

Many individuals alter their economic and financial decisions based upon legislative enactments. That is obvious, but if you have legislative measures which are adopted and held in limbo for the 90-day period, I think you create a situation that might very well be more complicated than we now have. I think the 90-day delay would further hamper flexibility of the Council in terms of addressing situations that have been identified as needing attention, and it might then very well foster adoption of stopgap emergency measures.

If anything, I would prefer to have the measures go into effect immediately with the opportunity the Congress certainly now has for subsequent adoption of superseding legislation. I think to have the 90-day delay goes away from a more effective solution to use of the emergency powers.

Mr. FAUNTROY. I want to thank both of you for very substantial contributions to our hearings and to invite you, if you care to remain for a second panel, the final panel, which is equally as distinguished.

We have not only the former counsel to the chairman, who worked with you, Jacques, in shaping the home rule charter, but we have also the very distinguished attorney in private practice who had the very considerable task of serving as Corporation Counsel in the initial

period—Mr. Risher. Also, Mr. Kramer, associate dean of Georgetown University Law School. We ask that they come forward.

As they come forward, I yield to General Counsel.

Ms. LUNSFORD. I would simply like to say to both the gentlemen that a review of the Home Rule Act is presently part of what we are looking forward to doing the latter part of this congressional session. We are already beginning to key in on some issues.

I would like certainly on behalf of the committee to invite the participation of both you gentlemen when we get into an in-depth look at the home rule charter and amendments thereto.

Mr. FAUNTROY. Attorneys Harley J. Daniels, John R. Risher, Jr., and John R. Kramer.

STATEMENT OF HARLEY J. DANIELS, ATTORNEY AT LAW; JOHN R. RISHER, JR., ATTORNEY AT LAW; JOHN R. KRAMER, ASSOCIATE DEAN, GEORGETOWN UNIVERSITY LAW SCHOOL

Mr. FAUNTROY. Gentlemen, thank you for taking the time to come and share with the committee your reflections and recommendations on this process.

STATEMENT OF MR. JOHN R. RISHER

Mr. RISHER. Thank you, Mr. Chairman.

I have prepared and given to the clerk, Mr. Chairman, a copy of a prepared statement of mine. I might add parenthetically the statement was first prepared by me, if I recall correctly, in January of this year, and submitted to Mr. Eagleton's committee that was considering the same subject matter as this subcommittee is. So the only change is simply to note the intervening decision by the District of Columbia Court of Appeals.

I will not read the entire statement, but I think it may be helpful if I read what I regard to be some of its more pertinent provisions.

The formal statement is as follows:

I am most pleased by this opportunity to appear before the committee to share my views about the emergency legislation authority of the Council of the District of Columbia, and my considerable concern about the manner in which this authority has been exercised.

COUNCIL'S MISUSE OF EMERGENCY LEGISLATION

My concern is not new. Indeed, it was the subject of a series of opinions which I wrote during my tenure as Corporation Counsel for the city. I then advised that it appeared that the counsel had frequently misused its emergency legislation authority.

Accordingly, in the opinion I outlined the remedial steps I thought appropriate to avoid an unfavorable judicial decision that might significantly constrict the exercise of the authority.

Unfortunately, the Council heeded only some of my views. As a result, the court of appeals recently held that the Council's practice of repeatedly enacting emergency legislation, having the same substantive provision, violates the charter in the Self-Government Act.

At the outset, I should state that I do not believe the court of appeals decision is to be reviewed with the great alarm some would suggest. I think it is a very narrowly drawn opinion, and it does not seek to foreclose in blanket fashion the exercise of emergency legislative authority.

Indeed, I believe the argument can be persuasively made that the court did not decide that under no circumstances whatsoever could there be successive enactments of emergency legislation having substantially the same provision.

The other view that I would share, one which I believe was impressed upon the members of the court, is that it is my belief that government cannot serve its purpose well unless its legislature may promptly respond to emergency situations by quickly enacting appropriate legislation.

The Council's emergency. legislation authority therefore in my view is an essential ingredient to the exercise of self-government by the people of the city. Indeed, this truism was confirmed by the recent need for this Congress to pass Public Law 96–124, which permitted District of Columbia Law 3–38 to take effect immediately.

This emergency, legislative response by Congress was needed to end the uncertainty as to the usury ceiling in the District of Columbia, an uncertainty that was the byproduct of the Council's action leading to the superior court decision to which I have referred.

CRITERIA INVOLVED IN EMERGENCY LEGISLATION

In my view, therefore, the question is not whether the Council should have the emergency legislative authority. Clearly it should. Rather, the question is, What should be the criteria for the exercise and for the review, both by the courts and by the Congress, of the exercise of such authority.

The process for enacting permanent legislation by the Council permits those who are to be affected by it to study the proposal and to express their views both before the Council and the Congress before it takes effect.

Just as important, the process also permits both the Council and the Congress a period within which to deliberatively consider the measure.

Both are extremely important consideration—the right of the people and the duties of the legislature are served by the permanent legislative process.

HOME RULE ACT PROVISION

None of these safeguards, however, applies to the same extent in respect to emergency legislation. Instead, the charter authorizes such measures to take effect immediately upon a determination by two-thirds of the members of the Council that it should consider emergency legislation, and then by adoption by a simple majority of proposed emergency legislation.

The charter was sensitive to this and so the charter provision pertaining to emergency legislation represented an obvious effort by Congress to balance the electorate's right to participate in the deliber-

ative formulation of legislation against the need when emergency circumstances arise, to have its local legislative body promptly respond to such circumstances.

It is for this reason that emergency acts remain in effect for only a temporary period of 90 days, an effective life which in part reflects the concern that the expedited haste with which they are enacted may be shown by more deliberative considerations to have produced undesirable legislation.

USE OF EMERGENCY LEGISLATION

The Council's repeated use of its emergency legislation authority I suggest has revealed a lack of real concern for the deprivation of the basic procedural safeguards that it works.

Such legislation is almost invariably enacted upon what approximates a moment's notice, under procedures which permit those affected by it almost no time for comment before the Council, and no prior opportunity to present their grievances in respect to it to either the Council or the Congress.

Equally important, the members of the Council, in my experience, seldom if ever have the opportunity to ponder the merits of the emergency legislation which they are called upon to enact and the practice of reenacting emergency legislation sometimes for a period of years, belying, it seems, the existence of an emergency, without expeditiously considering even permanent—considering, I am saying, even permanent replacement legislation, seemingly demonstrates that seldom is it truly the product of an emergency.

Instead, I believe the primary use of the authority is an expression of political disfavor with the review authority Congress has retained, and a device for avoiding dissent by the electorate, the people of the District of Columbia, in respect to extremely complicated and highly controversial matters.

Here I might add, Mr. Chairman, that one of the first opinions that I wrote as Corporation Counsel was concerned with the Council's use of its authority to pass resolutions, an authority which is to be distinguished from the authority to enact legislation.

COUNCIL RESOLUTION

When I became Corporation Counsel almost a year after self-government had been in operation, I found that the Council sought to avoid, whenever possible, and with great frequency, the enactment of legislation by simply passing resolutions that were designed to accomplish what only legislation could accomplish; for example, to dictate how the executive branch should or should not act.

I can recall one that in force and effect totally removed the Director of General Services from the supervisory executive authority of the Mayor, and this was a frequent political device used by the Council prompting a very lengthy opinion on my part in August 1976.

That device was similarly used by the Council in an effort, since resolutions are not presented to or subject to congressional discretion, any review at all by anyone, including the electorate of the political process.

CONGRESSIONAL REVIEW

I am not an advocate of the present formal process of congressional reviews of acts of the Council. However, until the Self-Government Act is amended to delete this provision I shall remain firm in my position that the act as written should be steadfastly respected by the Council.

Thus, although I will continue to support efforts to end the formal process of congressional review, I cannot accept the repeated use of emergency legislation authority for the purpose of clumsily seeking to avoid the congressional review.

The short of the matter is that the act of political protest, which explains in my judgment why much of this legislation is reenacted without any meaningful effort by the Council to consider superseding permanent legislation, deprives those who are adversely affected by it of any meaningful opportunity to participate in the legislative process.

At the same time, I fear that it deprives the citizens of the District of Columbia of what they are entitled to; namely, a deliberate full consideration by the Council of the effects of its emergency legislation.

Politcal expediency is an unacceptable justification for this deprivation.

DEFINING AN EMERGENCY

There obviously is much uncertainty as to what may be regarded as emergency circumstances. And the court of appeals had no occasion to address that issue. For the Council, though, it seems that an emergency is an emergency because it says so, even when reason dictates a contrary conclusion.

Nonetheless, I do not believe that an exacting definition of the phrase by either this Congress or the courts is desirable and am convinced it would not be particularly helpful.

STANDARDS FOR EMERGENCY LEGISLATION

What I do believe would be helpful is an appropriate declaration by Congress of the judiciary's role in deciding the standards for judging the validity of emergency legislation.

At present it may be persuasively argued that the courts may scrutinize the circumstances to determine whether they constitute an emergency.

While I do not believe the judiciary's authority should be so broad, however I do believe that it should be clearly established by Congress that the court may inquire as to whether the Council appropriately established that the necessary emergency existed.

In other words, there should be a judicial deference to the Council's determination of an emergency. However, the courts should not be bound by that determination when it is obviously specious.

INVALIDITY OF SUCCESSIVE EMERGENCY ACTS

Finally, there are some who argue that successive emergency legislation containing the same substantive provisions should be declared invalid per se. The court of appeals I do not believe said as much, and

I reject this view as an emergency may last for longer than was initially determined.

However, I believe that for all the reasons that successive emergency legislation which merely carries forward the same substantive provisions should be presumed invalid, unless it is passed merely to fill the void created by the pendency of replacement permanent legislation, or the Council persuasively demonstrates the emergence of unexpected new emergency circumstances.

Let me close, Mr. Chairman, by pointing out one of the basic reasons for my concern. It is the concluding footnote in my statement.

The Council, by passing emergency legislation, which has an effective legal life of only 90 days, sometime ago extended the right of tenants of residential units, to contract to buy that unit when it appeared the owner was about to sell it. The legislation has an effect of only 90 days.

The substantive provision of this emergency legislation extending the right of the tenants to a 120-day period within which to contract however made that right effective for 120 days.

In other words, the tenants on day one, under a piece of legislation that had an effective life of only 90 days, were given rights that extended for a minimum of 120 days.

Now, I find it difficult, and I have yet to hear anyone attempt to justify how something which is designed to exist as emergency legislation, an effective life of 90 days, can create a right for a period in excess of 90 days, and then get repeatedly enacted by the Council as emergency legislation.

I respect the notion that the court's decision is a death warning to either the status of home rule or to the proper authority of the Council.

Indeed, it is my view that the people of the District of Columbia ought to be quite pleased, ought to regard the decision as salutary, because what it shows is that a court most reluctant to involve itself in this political thicket said enough is enough, there are rights to be respected, and there are laws to be adhered to, and this process seemingly shows a disregard for both.

[The prepared statement of Mr. Risher follows:]

PREPARED STATEMENT OF JOHN R. RISHER, JR.

I am most pleased by this opportunity to appear before the Committee to share my views about the "emergency legislation" authority of the council of the District of Columbia,[1] and my considerable concern about the manner in which this authority has been exercised.

COUNCIL'S MISUSE OF EMERGENCY LEGISLATION

My concern is not new; indeed, it was the subject of a series of opinions which I wrote during my tenure as Corporation Counsel for the City.[2] I then advised that it appeared that the Council had frequently misused its "emergency legisla-

[1] The grant of the authority is contained in § 412(a) of the District of Columbia Self-Government Act, Pub. L. 93-198, as amended (the "Act").

[2] See, e.g., The Emergency Legislation Authority of the Council, 1 Op. C.C. 467 (1977); see also, Status of Acts of the Council of the District of Columbia as of the end of the 94th Congress (and the First Council Period), 3 Op. C.C. 534 (1978). The problems I outlined were partially remedied by the 1978 amendment to § 602(c) of the Act which shortened the thirty-day Congressional review period, during the pendency of which acts of the Council may not take effect.

tion" authority. Accordingly, in the opinion I outlined the remedial steps I thought appropriate to avoid an unfavorable judicial decision that might significantly constrict the exercise of the authority. Unfortunately, the Council heeded only some of my views [3]—as a result, the Court of Appeals recently held that the Council's practice of repeatedly enacting "emergency legislation," having the same substantive provision, violates the Charter in the Self-Government Act.[4]

At the outset, I should state that it is my view that government cannot serve its purposes well unless its legislature may promptly respond to "emergency" situations by quickly enacting appropriate legislation. The Council's emergency legislation authority therefore is an essential ingredient to the exercise of self-government by the people of the city. Indeed, this truism was confirmed by the recent need for this Congress to pass Public Law 96–124, which permitted D.C. Law 3–38 to take effect immediately. This emergency, legislative response by Congress was needed to end the uncertainty as to the usury ceiling in the District of Columbia—an uncertainty that was created by the Superior Court decision to which I have referred. In my view therefore the question is not whether the Council should have emergency legislation authority. Rather the question is what should be the criteria for the exercise and review of such authority. The answer to this question requires a brief discussion of the nature of the Council's legislative authority.

COUNCIL'S EXERCISE OF LEGISLATIVE AUTHORITY

Ordinarily, acts of the Council do not take effect until Congress has been afforded thirty days within which to review, and if it elects to do so veto, them. Such acts, which are referred to as permanent legislation, may not be enacted by the Council unless the bill proposing them has been "read twice in substantially the same form, with at least thirteen days intervening between each reading." [5] Under the Council's practice, all such bills are first published in the District of Columbia Register. In other words, if the bill is substantially modified between readings, and as published, it must be read twice again. Accordingly, the process for enacting permanent legislation permits those who are to be affected by it to study the proposed law, and to express their views both before the Council and the Congress before it takes effect. Just as important, the process also permits both the Council and the Congress a period within which to deliberatively consider the measure.

HOME RULE ACT PROVISION

None of the safeguards applies to the same extent in respect to emergency legislation. Instead, the Charter provision of the Act which authorizes such measures provides

> SEC. 412(a) . . . If the Council determines, by a vote of two-thirds of [its] members that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such an act shall be effective for a period of not to exceed ninety days. . . .

This provision represents an obvious effort by Congress to balance the electorate's rights to participate in the deliberative formulation of legislations against the need, when "emergency circumstances" arise, to have its local legislative body promptly respond to such circumstances. Accordingly, emergency acts remain in effect for only a temporary period of ninety days—an effective life which in part reflects the concern that the expedited haste with which they are enacted may be shown by more deliberative consideration to have produced undesirable legislation.

USE OF EMERGENCY LEGISLATION

The Council's repeated use of its emergency legislation authority has revealed a lack of real concern for the deprivation of the basic procedural safeguards that it works. Such legislation is almost invariably enacted upon what approximates

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[3] The Council has enacted approximately 300 "emergency acts" since January 1975.

[4] *District of Columbia* v. *The Washington Home Ownership Council, Inc.*, D.C. App. No. 79–1053 (dec. 28 May 1980) (*en banc*), *aff'd. Washington Home Ownership Council, Inc.* v. *District of Columbia*, D.C. Super. Ct. Civil Action No. 10624–79. 107 WLR 1985 (dec. 19 October 1979).

[5] Act, § 412(a).

a "moment notice," under procedures which permit those affected by it almost no time for comment before the Council—and no prior opportunity to present their grievances in respect to it to either the Council or the Congress.

Equally important, the members of the Council seldom, if ever, have the opportunity to ponder the merits of the legislation—and the practice of re-enacting "emergency legislation" sometime for a period of years, without expeditiously considering even permanent, replacement legislation demonstrates that seldom is it truly the product of an emergency. Instead, I believe, the primary use of the authority is an expression of political disfavor with the review authority Congress has retained, and a device for avoiding dissent by the electorate in respect to extremely complicated and highly controversial matters.

I am not an advocate of the present formal process of Congressional review of acts of the Council. However, until the Act is amended to delete this provision I shall remain firm in my position that the Act as written should be steadfastly respected by the Council. Thus, although I will continue to support efforts to end the formal process of Congressional review, I cannot accept the repeated use of emergency legislation authority for the purpose of clumsily seeking to avoid the Congressional review period. For the short of the matter is that the act of political protest—which explains why much of this legislation is re-enacted without any meaningful effort by the Council to consider superseding permanent legislation—deprives those who are adversely affected by it of any meaningful opportunity to participate in the legislative process. Political expediency is an unacceptable justification for this deprivation.

STANDARDS FOR "EMERGENCY" LEGISLATION

There obviously is much uncertainty as to what may be regarded as "emergency circumstances." For the Council it appears an emergency is an emergency because it says so, even when reason may dictate a contrary conclusion. Nonetheless, I do not believe that an exacting definition of the phrase is either desirable, nor that it would be helpful. What I do believe would be helpful is an appropriate declaration by Congress of the judiciary's role in deciding the standards for judging the validity of emergency legislation. At present, it may be persuasively argued that the courts may scrutinize the circumstances to determine whether they constitute an emergency. While I do not believe that the judiciary's authority should be so broad, however, I do believe that it should be clearly established by Congress that the Court may inquire as to whether the Council appropriately established that the necessary emergency existed. In other words, there should be judicial deference to the Council's determination of an emergency; however, the courts should not be bound by that determination when it is obviously specious.

INVALIDITY OF SUCCESSIVE EMERGENCY ACTS

Finally, there are some who argue that successive emergency legislation, containing the same substantive provisions, should be declared invalid per se. I reject this view, as an emergency may last far longer than was initially determined. However, I believe for all of the above reasons that successive emergency legislation, which merely carries forward the same substantive provisions, should be presumed invalid,[6] unless it is passed merely to fill the void created by the pendency of replacement permanent legislation that is awaiting Congressional review, or the Council persuasively demonstrates the emergence of unexpected, new emergency circumstances.

Mr. FAUNTROY. Thank you so much, Mr. Risher, for what we have come to expect as a very incisive and forthright and candid statement.

I would ask that you remain for questions which I would like to tender to all members of the panel.

Would you be kind enough, Mr. Daniels, to make your presentation at this time?

[6] A recent, most disturbing example of abuse of the authority is the enactment of emergency act 3-144. That measure, is the seventh amendment of § 602(b) of the Rental Housing Act, D.C. Law 2-54. Although emergency acts have a legal life of no more than 90 days, this provision requires a landlord, who wishes to sell his property, to give his tenants 120 days within which to contract to buy it. Thus, the emergency act purports to create a right which has a longer life than the legislation creating it (and seemingly forecasts an interminable emergency).

STATEMENT OF MR. HARLEY J. DANIELS

Mr. DANIELS. Certainly, Mr. Chairman.

Let me begin by saying what a great pleasure, indeed what a joy it is for me to be sitting here and to see you sitting where you are sitting. A great joy to call you Mr. Chairman.

I remember well the first time that several of us in this room came into this hearing room, back in 1971, and there was a question as to whether there was even going to be a seat available down at the end of this table.

I am indeed pleased to see you, Mr. Chairman, sitting in the middle of the committee room and conducting this hearing. It illustrates we have come a long way, indeed.

But I'm afraid that we have probably not come far enough to solve this problem in quite the way that I think it ought to be solved.

The problem as I see it comes out of the delicate and negotiated balance that we arrived at, that was arrived at in connection with the formulation of the home rule bill.

CONGRESSIONAL LAYOVER PERIOD

On the one side, in order to get the very major and extensive legislative power that the city so desperately needed, that the advocates of home rule felt were so important to effective local government, it was necessary in the negotiations to agree to a congressional layover period. that is to give Congress some opportunity to have their say in the legislation that was to be passed by the City Council.

It was a vestige of the old system. It was in a sense an inability of Congress really to give the power to the District without retaining the reins. We saw that not only here with the 30-day layover period, but in the budget area as well, and in several other areas of the home rule bill.

On the other hand, as we heard today, and as I remember well, there was a feeling that the congressional layover period might cause considerable problems when there was an emergency situation that had to be dealt with. That the particular layover period might make it difficult for the local government to act under emergency circumstances.

So the compromise that we now are dealing with today, the one that the court found addressed in *The Home Ownership Council* case, proved to have a lot of unforseen problems. It proved to be an unrealistic balance, I believe, between the ability of Congress to continue to hold the leash on the District and on the other hand the ability of the city government to do the work that was necessary to get a good piece of legislation drafted in time to deal with the day-to-day problems that the Council has to deal with.

COUNCIL'S ABUSES RE EMERGENCY LEGISLATION

Now, the problem is—I think Mr. Risher, Mr. DePuy and I certainly would agree—that abuses have come from what I regard as an unrealistic solution which the Congress imposed through the home rule bill.

The fact of the matter is that not enough time was left for the Council to deal with legislation. As a consequence, they essentially took matters into their own hands, found solutions to be able to keep the city running on a day-to-day basis, and they tested the limits of their authority in this area.

Finally the District of Columbia Court of Appeals has said "I think you may have overstepped the boundaries a bit."

I also agree with Mr. Risher that the court decision is fairly narrow. It shouldn't pose us any tremendous problems in resolving it. But at the same time it forces us to look at the compromise that was reached in late 1973 with the formulation of the home rule bill.

So we are faced with how should the balances be redrawn, given the court's opinion.

FAVORS ELIMINATING CONGRESSIONAL REVIEW

One obvious opportunity made available here for the Congress is to eliminate congressional review. Say that the District has proved its ability to legislate, to legislate effectively, and over this transition perhaps congressional review was useful, but it no longer serves a function. That is my preference. I believe it is the preference of most of those who have testified today.

But I do question whether it is a truly practical solution to the problem. By "practical" I mean can you get it through the House of Representatives.

If the chairman makes the judgment that is possible, I would certainly support that solution to the problem. I think that removes the problem. The difficulty of emergency then can be placed in the proper context; that is, the Council can only act in emergencies and otherwise it can use its regular legislative process to resolve problems without the difficulty caused by the congressional layover.

DETERMINING FEDERAL INTEREST

Another approach, and I believe it is one suggested by Mr. McKinney—and it has a good deal of appeal—is the possibility of placing the burden on the Congress to come forward and with respect to specific pieces of legislation say, "Yes, there is a Federal interest, we want to examine that Federal interest, and therefore we want some additional time to be able to look at that specific piece of legislation."

I think the problem is that the home rule bill created a set of arrangements which gives Congress far more authority, far more discretion than Congress really needs or wants or requires.

We have seen that because over the last 5 years, or almost 6 years, of operation of the Home Rule Act Congress has only taken action once with respect to a piece of District legislation.

So by adopting an approach such as that put forward by Mr. McKinney in his bill you are in effect saying to the Congress "If you have a problem make that known and then exercise your authority in that way."

I think this approach is even more desirable when one considers that the layover issue is really a phantom issue anyway, because Congress at any time may exercise its constitutional authority with respect

to the District of Columbia and enact superseding legislation. It doesn't need 7 days, it doesn't need 30 days, it doesn't need 120 days. It can do it tomorrow, at any time. That is constitutionally guaranteed.

In a sense the 30-day layover period was just another reinforcement of that in the sense as we have seen it turned out to be rather mischievous and has really served to no one's advantage, it seems to me.

But yet I am sure that there are members who are going to insist on some kind of congressional control notwithstanding the constitutional protection, and perhaps the McKinney approach offers a way of dealing with the problem.

EMERGENCY 180-DAY PERIOD

A final approach or another approach, and one that seems to be some consensus developing around, is the idea of extending the emergency period from 90 to 180 days.

Now, there is some appeal in that. It takes care of the Council's problem; that is to say, gives the Council additional time within which to consider legislation.

But I don't believe that it deals with some of the problems that we have heard discussed today by Mr. Rees, by Mr. DePuy, by Mr. Risher, and I think problems that I see as well; that is, the problem of emergency legislation is emergency legislation, and procedure are bypassed and niceties are not observed.

I would be reluctant to recommend to the committee a 180-day extension of the emergency power, because I believe that the emergency power is not for the protection of Congress or not for the protection of the Council. It is for the protection of the people of the District of Columbia. And I would urge that we not change that protection radically.

I think what you may want to consider is the possibility of dealing specifically with the issue raised by the court in *The Home Ownership Council* case. They said that you cannot do this more than once. That is, you cannot enact emergency legislation more than once.

Now, it seems to me that the repeated reenactment do pose a problem—three, four, five times—I think there is some testimony that some acts have been enacted as many as five times. I don't know what the record is. Professor Kramer tells me it is seven times. And I am sure it could go on even longer.

But it seems to me that it could be—seven is a lot. Some other numbers are talked about. But it seems to me we can deal with the problem raised by the court perhaps and perhaps even deal with the 180-day problem by allowing the Council one time, upon making a new emergency finding, the emergency still exists, to extend one 90-day period; that gives you your 180-day overall.

But it does provide some protection in requiring the Council to reaffirm the continuing existence of the problem. That would in turn give others an opportunity to redress their concerns, and it would I believe take care of the problem raised by the court in the *Home Ownership Council* case.

The fact of the matter is that really is the only problem you are confronting today is the inability of the Council to reenact the emergencies. I think you can achieve the same result by a 90-day and then another 90-day option, as it were, upon a refinding of an emergency by the Council.

FAVORS TWO-THIRDS VOTE BY COUNCIL

I would also agree with Mr. DePuy that both reenactments ought to be passed by a two-thirds vote of the Council in addition to the emergency resolution.

Mr. FAUNTROY. Thank you so much, Mr. Daniels.

It is a real pleasure for me to see you at that table, likewise, and to reflect upon the years that you worked on our staff as our Chief Counsel, and the very efficient and effective work that you did on my behalf in helping to shape the home rule charter to begin with.

Too bad we had to add the review requirements as a result of the whole process.

I do appreciate your comments and your suggestion that perhaps now is the time to eliminate that.

Now may we move to Dean Kramer. As I move to him, I certainly want to express the appreciation of this committee, not only for the excellent training that Georgetown Law School has given to so many of our staff from time to time, but for the issue-oriented action research type education that you afford your students. It makes them so deeply involved in this community and its ecorts to address its problems of governance.

STATEMENT OF MR. JOHN R. KRAMER

Mr. KRAMER. Thank you very much, Mr. Chairman. We intend to keep that up certainly so long as Professor Newman lives.

I think we are seeing an interesting consensus develop here that we do have two problems, not just one, and that it is a combination of the emergency and the 30-day period that have to be addressed singly, perhaps.

It is unfortunate the reason we are here is that they are combined. It is rather unusual.

This District is unlike any other legislature, State, municipal or Federal, in the country. Two-thirds of the City Council can, as Mr. Rees described it, in 45 minutes, pass legislation pursuant to no real deliberation and no standards, and it goes into effect.

A majority can pass legislation and it doesn't happen for 7 months. And that is insanity. No Federal legislature, no State legislature, no city legislature tolerates that.

On the other hand, there are I think three values to keep sight of, at least three, which have been abused throughout this 6-year process. One is the interest of the Council in flexibility, in being able to meet emergencies described by Mr. Risher and I think appropriately described by him as flexibility verging on lawlessness, lawlessness that his memos were impossible to stop.

Obviously there was a political lawlessness here and considerations between the Mayor and the City Council as well as involving the Con-

press. I think the court of appeals has been gingerly in its handling of it. I think Mr. Risher's description is more accurate.

At the same time there is the alleged congressional interest that went into the adding on the 30-day layover. I think again Mr. Daniels has adequately described that.

One overturn in 6 years indictes that the congressional interest is more apathy and lack of concern than real interest. But nonetheless, it has to be recognized, recognized perhaps in a different context, that only you, Mr. Chairman, are aware of.

CONGRESSIONAL REVIEW

The 30-day layover period when it was started in 1974 was a direct and flat denigration of the District of Columbia's power to elect and serve itself. In 1980 a 30-day layover is just another form of congressional veto. Therefore your brothers and sisters in this House of Representatives are going to look at it from a somewhat different slant.

It is not simply saying "District of Columbia, you cannot do your task." It is a variant of a congressional veto, and those pass as you know on the House floor by four and five to one margins. So it is a little different in 1980 than 1974.

Finally there is a third consideration which has been brought forth most by those now in private practice. They do it at times in the name of concern for the citizens, but commercial interests are also citizens; in fact, they are better taxpaying citizens than most other citizens. They are concerned about certain interests in the law that are critical.

The 30-day layover period, or even Mr. DePuy's 90-day period, present some serious problems there with knowing where you stand, knowing what your rights are.

As Mr. Risher said, the citizens being able to participate and know what is going on with legislation in the District.

I think there is a further concern; that is, that what has happened in the District as everywhere else in this country is that instead of discussing substance we litigate procedures and the lawyers take over and nobody cares about what is going on other than the lawyers.

We are in court every day. I am afraid some of Mr. Risher's suggestions would simply reinvent that wheel.

The question of judicial deference to the determination of emergency, but not if it is obviously specious. I congratulate 10 students who can make a living litigating "obviously specious" for the next 3 or 4 years on behalf of District of Columbia commercial interests and would crowd out poor Mr. Risher.

I therefore would like to suggest whatever is done is done with an intent to avoid as much as possible legal entanglement here. More memos from the Corporation Counsel, more memos from the City Council's counsel, and more argument in the District of Columbia Court of Appeals.

Let the city run itself and not the District of Columbia Court of Appeals and not the law firms.

Now I will approach all those three values.

FAVORS DELETING 30-DAY REVIEW

First of all take a quick look at the 30-day layover. My ultimate suggestion there is pretty much the same as everybody's. Do away with it. My problem with doing away with it is not the one expressed here. It is the concern that Congress will view this as an undermining of the legislative veto.

Another alternative. The 30-day problem is caused because it becomes 58 days average, 7 months in total. There are ways of dealing with 30 days that bring it closer to 30 days.

For example, in title X of the Budget Act, the impoundment control provisions, there are recission provisions—the President proposes a recission of funds and those lay over in Congress 45 days. The 45 days includes Saturday and Sunday and holiday. It only excludes adjournment sine die and adjournment for recess for over 3 days.

ALTERNATIVE: 30 CALENDAR DAYS

It seems to me you could either adopt that approach or just make 30 days 30 calendar days. I don't think there is a problem. I am not aware of it in past history of the City Council meeting during the rather brief period that Congress now adjourns sine die.

After all, every election year, which is every even year, they come back in on January 3 constitutionally and they hold pro forma sessions every 3 or 4 days. So if they really want to do something, if that once every 6 years come up, they certainly could go ahead.

I don't know why 30 days could not be 30 calendar days if you thought the concern with the legislative veto would prevent the undoing of the layover in its entirety.

That is one suggestion.

If you want to meet the 30-day head-on, it seems to me the approach to take is to analogize as you have the District to both a city and State. There is no other city and no other State that is subject to legislative review as a condition precedent.

Every city is subject to executive review, for example in its bonding authority, to judicial review after the fact, too much of it, as to the validity of the city act under the home rule charter or the State constitution, and of course the legislation subsequently overturning the city law.

Where States are concerned, the basic review particularly for example under the dormant commerce clause is litigation after the fact to determine whether or not it violates the Federal interest. But not prior legislative review.

And that is your strongest argument.

Again, of course, why should the District be treated as if it were an administrative agency, which is what legislative veto applies to of the Federal Government. You can make all those arguments.

If you are nervous about them, I would suggest making 30 days, 30 days and 30 days passes rather quickly. That is in fact shorter than Mr. DePuy's 90 and it is pretty easy to calculate for certainty purposes when it starts and when it stops.

USE OF EMERGENCY POWERS

With respect to the emergency power, I am very troubled, more than even Mr. Risher is. And I should think that the concept of emergency should be basically removed from the law. I think the witnesses today said that.

It can be defined. I have seen the way the cities do it. It is not satisfactory. It leads to litigation.

The concept of emergency certainly has been abused here. I don't know that even a tighter definition would not be biased under the right circumstances. But obviously the City Council needs to meet some situations in which speed is of the essence.

Not 11 o'clock in the morning to noon, because after all the Congress of the United States facing national problems doesn't have that kind of emergency authority, and yet can move quickly if it wishes to.

How? Obviously pursuant to waiver of the rules, suspension of the rules authority which, as you know, does not necessarily waive, although it can, committee hearings. Certainly it doesn't waive committee voting and mark up and committee reports. And normally it just means you bypass the Rules Committee and move very quickly on to the calendar.

What are the blockades in the Home Rule Act to that? Namely that period of the reading, which it seems to me could be made subject to a waiver by whatever majority of the Council you wanted for whatever reasons they wanted. Because Congress isn't subject to reasons when it suspends the rules by a two-thirds vote on the Mondays it does so.

Second perhaps an end to that ridiculous practice, and I forget who mentioned it, of having to go back for more readings every time there is an amendment. The Congress doesn't do that.

COUNCIL SPEEDUP BY LEGISLATIVE PROCEDURES

Why not apply the legislative procedures for speedy action that apply to the Congress which normally drags it heels but when it has to—after all Mr. Risher's example of emergency was the Congress acting to pass Public Law 96–124.

Congress can do it. The D.C. City Council with those same procedures in its hand could do the very same thing without having to abuse the meaning of the word "emergency" without only voting on the procedure and not on the substance, and without depriving the people of their right to know about the legislation and to comment on it in however tight the timeframe may be.

The word gets out pretty quickly in a community as tight as this and the people concerned, namely commercial interests, can get their lawyers in very quickly if they are worried about legislation in time to make a comment on it.

GIVING COUNCIL FLEXIBILITY

So that I would suggest that the emergency legislation authority be removed. I do not think it can be other than abused. I do not think it can be other than abused. I do not think it can be successfully defined.

But I think in place of that the City Council should be given the authority to waive that 30-day procedure and that the authority to waive, get around it, it may be other than procedure, the reading once you get a substantive amendment.

I think putting those two things together, the end of the 30-day rule or a clear 30-day rule, no arguments, 30 days means you count them, 1, 2, 3, 4, 5 on the calendar, coupled with congressional procedures which have stood up in practice over 100-and-some-odd years, is the way to resolve this, keeping the lawyers and the courts out of it is much as possible and giving the D.C. City Council flexibility and giving the Congress its ability to do once every 6 years what it seems to want to do.

Mr. FAUNTROY. Thank you so much for that stimulating idea on the emergency powers.

Let me begin with a question which probably Mr. Kramer would not care to even attempt to answer, but which Mr. Risher grappled with himself in his own testimony. And that is I would like for the panel to clarify for us, what is an emergency. Could you define it for us—what would be the criteria if we were to try to implement it as Mr. Kramer suggests that we cannot.

Mr. RISHER. Let me, if I may, Mr. Chairman, answer your question first indirectly by commenting on something that has been suggested and then go directly to it.

COUNCIL'S USE OF EMERGENCY LEGISLATION

The argument is made that the congressional review period is part and parcel of the problem here because quote "there is not enough time for the Council to enact permanent legislation."

If I understand that argument correctly—I don't really understand why it is a valid argument, first to state the Council doesn't have enough time to enact permanent legislation it seems to me says too much about the quality of its emergency legislation.

It would seem to me to follow that the emergency legislation is even of less quality because the enactment of permanent legislation requires a very, very involved detailed consideration.

The second thing is the fact that the permanent legislation is laying over under the congressional review period for 30 days does not explain more than the tip of the iceberg of the emergency legislative practice of the Council.

The Council isn't trying to fill a void created by the congressional legislative period, except in the rarest of occasions. It didn't want to review it. It didn't want the Congress to review it.

The fact that permanent legislation lay over for 30 days just seems to me has absolutely nothing to do with what is or is not an emergency, except to the extent, as the court of appeals—I am getting down directly to your question—in footnote 20 indicated, and I indicated in my opinion, which the court of appeals; namely, when the permanent legislation has been enacted, the Council determines that it is in respect to quote emergency circumstances.

The congressional review period will not run its course soon enough—that bespeaks possibly of an emergency. It is an emergency

because the Council decides it is an emergency, ought to be the basic position as far as I am concerned.

Mr. Kramer finds that too nebulous a concept to play with or to deal with. And I respect Dean Kramer's analysis. It is extremely difficult.

But at the same time it does seem to me that that is a judgment which is properly reserved to the legislature and it is for that reason that I say there ought to be some judicial deference to the legislative determination.

The problem with the legislation that is the subject of the court of appeals decision was that for the most part, if not totally, there was simply no cogent persuasive statement given to support the determination that there was an emergency. I cannot define it. But there are a lot of concepts in the law which cannot be defined with precision, but which we treasure very much.

I don't know what due process it, other than to say it is a process which is due. The Congress concerns itself every day with that phrase. It acquires a meaning. The courts concern themselves with it every day. It acquires a meaning.

And I do believe that it is so very, very important that we short-change the permanent legislative process most infrequently that I would not change that statutory scheme.

Yet, at the same time I don't want the Council to have to worry every day and the citizens of the District of Columbia as to whether a given piece of emergency legislation is invalid simply because the courts may say it is invalid. We have got to strike a delicate balance here.

Mr. FAUNTROY. Well, thank you so much for that.

I wonder if you would care to help us now with the whole question of Federal interest.

FEDERAL INTEREST

As you know from Mr. McKinney's formulation, the review period will be reduced to 7 days unless there were a determination that there was a Federal interest that required that the full 30-day review period run.

I wonder if any member of the panel would care to comment on what criteria for the Federal interest ought to be in that case.

Mr. DANIELS. Mr. Chairman, I would say the matter of Federal interest is not a legal issue at all, not one that is really capable of definition, of standards, because the Federal interest is in essence a political concept.

It is a concept of the delicate balance between the Congress and the local government. In the final analysis, as Mr. Risher indicated, an emergency is what the Council says it is.

The reverse side of that coin is that the Federal interest is what the Congress says it is because of its inherent constitutional responsibility for the District of Columbia. If the Congress says it is in the Federal interest to act, then that is the Federal interest. If the Congress says it is not, then it is a local matter.

I think that is just the nature of this particular world that we live in here in the District of Columbia.

Mr. KRAMER. I agree with Mr. Daniels. My problem with the McKinney bill is not the concept of Federal interest but the incredible uncertainty it raises because you don't know whether it is 7 days or any number of days stretching on with the adjournments and the recesses built-in. Then the recess is built-in, the built-in effect during the recess, and not in effect when it comes back.

The complexities of the bill trouble me, not the Federal interest. All of which reasons may be very diverse and not unified. But the trouble with it is the bill is in limbo in many ways. If it were a simple straightforward 7-day period, no problem.

Mr. RISHER. Mr. Chairman, let me add if I may I endorse what Mr. Daniels and Dean Kramer have said. I would like to add something else which requires a slightly different perspective, but something to which Dean Kramer referred earlier.

The dean somewhat I believe understated the significance of the congressional review period in the year 1980. There is considerable controversy now at the Federal level between the Congress on the one hand and the executive and the administrative agencies on the other hand that falls under the rubric of the Bumper amendment in legislative veto.

I am not an expert on what the mood of the Congress may be. But I am a reader of the newspaper. Perhaps the city does not serve its interests too well if it would say how offensive it is for there to be a congressional review notwithstanding the constitutional responsibilities the Congress has for the city while at the same time it appears that the Congress aware of its greater responsibilities for the entire Nation as a whole seems to be—in fact has said that it will review the actions of the Federal executive and the independent agencies that it has created.

The second thought that I would add is that there has been reference quite a number of times before you this morning to how long it took the Fire and Casualty Act amendments of 1978 to become effective after it became law because it was passed by the Council.

I don't think we ought to be misled by that legislative experience, because during the intervening period Congress enacted Public Law 95–526 and it was during the interventing period which was designed to shorten the congressional review period from the period originally prescribed in the Self-Government Act upon enactment.

And so as things now stand, we should not have this extraordinary delay and that example I think is somewhat of a misleading example as we meet subsequent to the enactment of Public Law 95–526.

Mr. FAUNTROY. Gentlemen, you have been most valuable to the committee in your comments and your observations as to how we resolve our dilemma. I want to thank you on behalf of the entire committee for taking the time and thought in your presentation.

Are there any questions from members of the staff?

Thank you.

[Whereupon at 12:40 p.m. the session was adjourned.]

APPENDIX B

Council of the District of Columbia
Memorandum

District Building, 14th and E Streets, N.W. 20004 Fifth Floor 724-8000

To MEMBERS OF THE COUNCIL

From John P. Brown, Jr., Secretary to the Council

Date June 4, 1980

Subject REFERRAL OF PROPOSED LEGISLATION

Notice is herewith given that the following proposed legislation was introduced in Legislative Session on June 3, 1980. Copies are available in Room 28, Legislative Services Unit.

Title: Temporary Legislation Rule Amendment Resolution of 1980 (PR 3-187)

Introduced by: Councilmember David Clarke

The Chairman is referring this proposed legislation to the Commitee of the Whole.

cc: General Counsel
Legislative Counsel
Legislative Services Unit

David A. Clarke

A PROPOSED RESOLUTION

PR 3-187

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 3, 1980

Councilmember David A. Clarke introduced the following resolution, which was referred to the Committee on the Committee of the Whole.

To amend the Council Rules to permit consideration of temporary legislation.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Temporary Legislation Rule Amendment Resolution of 1980."

Sec. 2. The Rules Resolution for Council Period Three, effective March 27, 1979 (Res. 3-53), is amended by inserting the following new section 713a:

"713A. Temporary Legislation

"If the Council finds the existence of an emergency and approves an emergency bill under section 713, the Council may immediately consider, on first reading, without committee referral, a temporary bill: PROVIDED, That the temporary bill is substantially similar to the emergency bill and the temporary bill remains effective for no more than 180 days."

Sec. 3. This resolution shall take effect immediately.

Enrolled Original

A RESOLUTION

Res 3-53

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 27, 1979

To provide rules of organization and procedure for the Council of the District of Columbia during Council Period Three.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Rules Resolution for Council Period Three".

Sec. 2. The document entitled "Rules of Organization and Procedure of the Council of the District of Columbia", attached and made a part of this resolution, shall be the rules of the Council of the District of Columbia.

Sec. 3. This resolution shall take effect upon its adoption by the Council of the District of Columbia.

Rules of Organization and Procedure

of the

Council of the District of Columbia

ARTICLE 1

DEFINITIONS

101. For the purposes of these Rules:

(a) "agency" means any of the organizational units of the District of Columbia including, but not limited to, departments, boards, divisions, commissions and offices, whether subordinate to or independent of the Mayor.

(b) "Auditor" means the Auditor of the District of Columbia as established by section 435 of the Charter.

(c) "bill" means a proposed act of the Council.

(d) "budget" means the entire request for appropriations and loans or spending authority for all activities of all agencies of the District financed from all existing or proposed resources and shall include both operating and capital expenditures.

(e) "Chairman" means the Chairman of the Council of the District of Columbia, the office of which was created by section 411 of the Charter.

(f) "Charter" means Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198, 87 Stat. 774.

(g) "Comprehensive Plan" means the comprehensive plan for the National Capital, including any elements thereof, as provided for in section 423 of the Charter.

(h) "Council" means the Council of the District of Columbia established by section 401 of the Charter.

(i) "Council office(s)" means the administrative offices of the Council under the supervision of the Secretary to the Council.

(j) "Council Period" means the legislative session of the Council beginning on January 2nd of each odd-numbered year and ending on January 1st of the following odd-numbered year.

(k) "Executive Branch" means the Mayor or his designated agent or the appropriate agency of the government of the District of Columbia.

(l) "legal holiday" means a legal public holiday of the District of Columbia or the United States as set forth in 31 Stat. 1404, as amended, (D.C. Code, sec. 28-2701), or in 5 U.S.C. 6103(a).

(m) "Mayor" means the Mayor of the District of Columbia as provided for in section 421 of the Charter.

(n) "measure" means any proposed act, resolution, or amendment thereto, or motion pending before the Council or before a committee of the Council.

(o) "normal business hours" means 9:00 a.m. through 5:30 p.m., Monday through Friday, except legal holidays.

(p) "official action" has the same meaning as in section 742 of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198, 87 Stat. 774.

(q) "remuneration" means the rate or level of compensation to be paid an employee for the performance of his duties up to and including but no more than the maximum authorized and appropriated by law for that position.

(r) "recess of the Council" means those periods of time during which regularly scheduled meetings of the Council are not held, i.e., the month of August, the ten (10) day period beginning on the Friday immediately preceeding Easter and the fourteen (14) day period ending on January 1st of each year. Committees may meet during this period and take any action as authorized by these Rules; however, no bills or resolutions other than emergency bills or emergency resolutions to be considered at special or additional meetings called pursuant to these Rules may be introduced.

(s) "resolution" means an expression of a simple determination, decision or direction of the Council of a special or temporary character and includes actions of the Council concerning only its internal management and conduct;

"ceremonial resolution" means an expression of appreciation and/or an honorarium of limited application.

(t) "short title" means the term by which an act or a resolution may be cited as provided in a short title section of the measure.

(u) "subpoena" means subpoena ad testificandum or duces tecum, or both.

ARTICLE 2

OATH

On January 2nd of each odd-numbered year, or in the event that January 2nd is a legal holiday or a Sunday, on the next succeeding day not a holiday, Councilmembers whose terms begin at that time shall take and subscribe an oath or affirmation to support the Constitution of the United States and faithfully to discharge the office of Councilmember. The oath shall be administered to each Councilmember by a person of his choice authorized by law to administer an oath. The Secretary to the Council shall supply printed copies of the oath subscribed by Councilmembers in accordance with law and delivered to the Secretary to the Council to be recorded in the Council records as conclusive proof of the fact that the signer duly took the oath in accordance with the law.

ARTICLE 3

MEETINGS

301. Organizational Meetings

On the first day of each Council Period (which is not a Saturday, Sunday or legal holiday), the Council shall convene and shall, among other things, initiate such steps as will lead to the adoption of Rules of Organization and Procedure and shall elect a Chairman Pro Tempore pursuant to section 501(b) of these Rules: PROVIDED, That in the event a quorum is not present, these matters may be undertaken as soon thereafter as is feasible.

302. Regular Meetings

(a) Time

The Council shall hold regular legislative meetings once every other week on Tuesday of that week, except during the month of August or during the ten (10) day period which begins on the Friday which immediately preceeds Easter, or for the fourteen (14) day period ending on January 1st, of each year. When the day fixed for any regularly scheduled legislative meeting falls on a day designated by law as a legal holiday, such meeting shall be held at the same hour on the next succeeding day not a holiday. Regularly scheduled legislative meetings shall be held at 10:00 a.m.:

EXCEPT, That each fourth such meeting shall be held at 7:30 p.m. The Chairman may designate another hour for a meeting at the next previous legislative meeting or meeting of the Committee of the Whole.

(b) Place

All regular meetings of the Council shall be held in the Council Chamber, Room 500, of the District Building, 1350 "E" Street, N.W., unless another place is designated by the Council.

(c) Recess and Rescheduling

The Chairman, a majority of the Council being present, at any regular meeting, may recess that meeting to another time, day and/or place and, if a majority thereof is present, may reschedule any future regular meeting to another time, day and/or place.

(d) Cancellation

The Chairman of the Council may cancel a future regularly scheduled meeting.

303. Additional and Special Meetings

(a) Additional Meetings

Additional meetings of the Council may be called from time to time by the Chairman.

(b) Special Meetings

If at least two (2) Councilmembers desire that a special meeting be called by the Chairman, those Councilmembers may file in the office of the Secretary to the Council their written request to the Chairman for the requested special meeting setting forth the agenda therefor. Immediately upon the filing of the request, the Secretary to the Council shall notify the Chairman and other Councilmembers of the filing of the request. If, within twenty-four (24) hours after the filing of the request, the Chairman does not call the requested special meeting, to be held within seventy-two (72) hours after the filing of the request, a majority of the members of the Council may file in the office of the Secretary to the Council their written notice that a special meeting of the Council will be held, specifying the date, hour, place and agenda of that special meeting. The Council shall meet on that date and hour. Immediately upon the filing of the notice, the Secretary to the Council shall cause all members of the Council to be notified as provided in subsection (c) of this section.

(c) Notice

Whenever an additional or special meeting is called, the Secretary to the Council shall notify each Councilmember in writing not less than twenty-four (24) hours prior to the additional or special meeting. In each case, the notice of

such additional or special meeting shall state the date, hour, place and agenda of the meeting. No matter shall be considered at any additional or special meeting except those stated in the request and notification. Additional or special meetings to consider emergency matters may be called upon shorter notice: PROVIDED, That such shorter notice of such meeting(s) to consider emergency matters is agreed upon in writing by no less than a majority of the Councilmembers.

304. Quorum

A majority of the Councilmembers shall constitute a quorum for the lawful convening of any Council meeting and for the transaction of business except that a lesser number may hold hearings. A meeting shall not begin until a quorum is ascertained by the Chairman. Thereafter, the meeting shall proceed unless a Councilmember raises the absence of a quorum, whereupon the Chairman shall direct the calling of the roll and shall announce the result. These proceedings shall be without debate, and until a quorum is present, no debate or motion shall be in order except to recess for twenty (20) minutes to find absent members. After the recess, the roll shall be called again. If a quorum is present, the meeting shall proceed. If a quorum is not then present, the meeting shall thereupon be adjourned.

305. Proxies

No proxy shall be permitted either for the purpose of voting or for the purpose of obtaining a quorum.

306. Hearing of Mayor

The Mayor shall have the right to be heard by the Council upon request and at reasonable times set by the Council.

ARTICLE 4

PROCEDURES FOR MEETINGS

401. Order of Business for Regular Meetings

(a) Call to Order

The Council shall be called to order at the time and place set forth per section 302 of these Rules.

(b) Readiness

The Chairman shall ascertain the presence of a quorum.

(c) Order

If a quorum is present, the Council shall take up business in the following order unless a different order has been set for a particular meeting by the action of the Committee of the Whole, in which case, the order set forth by the Committee of the Whole shall be followed for that meeting, subject to section 403 of these Rules:

(1) Secretary's report on the filing of reports by Committees;

(2) Secretary's report of the introduction of new bills and proposed resolutions filed with that office, and the introduction by Councilmembers of new bills and proposed resolutions, by reading the short title thereof;

(3) Final reading by short title of and final vote on bills which have been pending at least thirteen (13) days since the reading thereof for amendment;

(4) Reading of reported and discharged bills by title(s) thereof for amendment with a limitation on debate to five (5) minutes per Councilmember per amendment;

(5) Reading by short title of and vote on proposed resolutions: PROVIDED, That ceremonial resolutions introduced for immediate consideration in the legislative session have been circulated to each Councilmember at least twenty-four (24) hours before the legislative session;

(6) Determination of the existence of emergency circumstances per section 713 of these Rules if proposed emergency legislation is to be considered at the meeting;

(7) Reading by short title of and vote on emergency bills, if any (only one reading and vote is required for emergency legislation);

(8) Official communications received from the Executive Branch and/or other governmental agencies;

(9) Other business.

402. Order of Business for Additional and Special Meetings

(a) Call to Order

The Council shall be called to order at the time and place set forth in the notice for the meeting.

(b) Readiness

The Chairman shall ascertain the presence of a quorum.

(c) Order

If a quorum is present, the Council shall take up business in the order set forth in the notice therefor.

403. Proceeding Out-of-order

The Chairman may, without objection, or upon the vote of a majority of the Councilmembers present and voting, take up any item of business out-of-order.

404. Committee of the Whole

(a) Every regularly scheduled meeting of the Committee of the Whole which follows a regular meeting of the Council shall be a work session on those bills and proposed resolutions, the reports of which were acknowledged during the preceding meeting of the Council as having been filed in the office of the Secretary to the Council.

(b) The Committee of the Whole may condition, by an affirmative vote of two-thirds (2/3) of the members present and voting, Council consideration of a measure upon receipt by the members, prior to the legislative meeting, of a

proposed amendment or substituted report designed to correct or respond to technical or legal deficiencies as may be identified by the Committee of the Whole.

405. Motions

(a) Reduction to Writing

If requested by any Councilmember or required by section 707 of these Rules, a motion shall be reduced to writing, delivered to the Secretary to the Council and read.

(b) Withdrawal or Modification

Any motion may be withdrawn or modified by the mover at any time before its amendment or voting.

(c) Motions Cognizable During Debate

When a question is under debate, the Chairman shall entertain no motion except:

(1) To adjourn;

(2) To recess;

(3) To reconsider;

(4) To lay on the table;

(5) To move the previous question;

(6) To postpone to a day certain;

(7) To recommit to committee;

(8) To amend or substitute;

(9) To postpone indefinitely;

PROVIDED, That the above motions shall take precedence in the order set forth.

406. Points of Order

Points of order shall be debatable only at the discretion of the Chairman, and if the Chairman permits debate, he shall have the authority to limit it.

407. Appeal

An appeal may be taken from any decision of the Chairman. In that event, the Councilmember appealing shall state his reason(s) therefor, to which the Chairman may respond. Such appeal shall be acted upon immediately. An affirmative vote of one-half (1/2) of the Councilmembers present and voting shall be required to sustain the Chairman.

408. Recognition and Speaking

(a) Recognition

No Councilmember wishing to speak, give notice, make a motion, submit a report or for any other purpose shall proceed until he has addressed and been recognized by the Chairman whereupon he may proceed to address the Council.

(b) Speaking

No Councilmember shall be permitted to speak more than once on any subject until every Councilmember desiring to be heard on the subject has been allowed to speak.

(c) Non-Councilmembers

The Chairman may recognize members of the public or employees of the government of the District of Columbia where the participation of such person(s) would, in the judgment of the Chairman, enhance the understanding of the matter under consideration by the Council. Recognition of non-Councilmembers during legislative meetings shall be limited to situations requiring emergency action by the Council.

409. Debate

Limitation of debate not otherwise provided for in these Rules shall be effected by a motion to move the previous question, made, seconded and carried by two-thirds (2/3) of Councilmembers present and voting, which shall be followed by a maximum of twenty (20) minutes of discussion by each Councilmember which time or any part thereof may be yielded to another Councilmember.

410. Voting

(a) Form

Voting shall be in the form of "YES", "NO" and "PRESENT".

(b) Determination

Votes shall be by voice with the result determined by the Chairman unless a Councilmember demands in advance of

voting a division of the house. If a division of the house is demanded, the Secretary to the Council shall call the roll of the Councilmembers in rotating alphabetical order so that the Councilmember whose name is called first is the same Councilmember whose name was called second on the next previous vote, and so on through the roll, so that the Councilmember whose name is called last is the same Councilmember whose name was called first on said next previous vote. Where a division of the house is demanded, the names of those voting "YES", "NO" or "PRESENT" shall be recorded.

411. Personal Interest

Any member who in the discharge of his or her official duties on the Council would be required to take an action or make a decision that would affect directly or indirectly his or her financial interests (as defined by section 601(b) of the District of Columbia Campaign Finance Reform and Conflict of Interest Act (D.C. Code, sec. 1-1181(b))) or those of a member of his or her household or a business with which he or she is associated, or must take an official action on a matter as to which he or she has a conflict situation created by a personal, family or client interest, shall disclose this information in writing to the Chairman. The Chairman shall excuse the member from votes,

deliberations and other action on the matter if the member requests to be excused. Any information disclosed under this section shall be included in the written record of the proceedings.

412. Personal Privilege

Any Councilmember may, as a matter of personal privilege, speak for a period not longer than ten (10) minutes upon such matters as may collectively affect the Council, its rights, its dignity and the integrity of its proceeding or the rights, reputation and conduct of its individual members in their representative capacities only.

413. Decorum of Councilmembers

(a) Full Attention

No Councilmember shall engage in private discourse or commit any other act tending to distract the attention of the Council from the business before it.

(b) Scope of Remarks

Councilmembers, when speaking or debating before the Council, shall confine their remarks to the questions under discussion or debate, avoiding personalities.

414. Decorum of Members of the Public

The Chairman shall maintain order in the Council Chamber, and, if in his opinion, the removal of any member of the public is necessary in order to maintain order, he

may, after warning, order the removal of any disorderly person(s).

415. Openness

All meetings of the Council at which official action of any kind is taken shall be open to the public. No resolution, rule, act or other official action shall be effective unless taken, made or enacted at such an open meeting.

416. Executive Session

The Council may, upon the affirmative vote of two-thirds (2/3) of the Councilmembers present and voting at a public meeting, convene an executive session to the extent permitted by section 415 of these Rules.

417. Records of Meetings

A written transcript or transcription shall be kept for all meetings at which official action of any kind is taken and shall be made available to the public during the normal business hours of the Council: PROVIDED, That a Councilmember may ask unanimous consent to revise and extend his remarks, and if given: (1) he shall file with the Secretary to the Council any such extension(s) within two (2) days (not including Saturdays, Sundays and legal holidays) after receiving said unanimous consent; (2) he shall file with the Secretary to the Council any such

revisions within two (2) days (not including Saturdays, Sundays and legal holidays) after the receipt at the Council office of the first transcript of the remarks; (3) he shall not make any such revision and/or extension which would cause another Councilmember's comments to be taken out of context; and (4) such extensions and revisions shall be annotated as such.

ARTICLE 5

ORGANIZATION OF COUNCIL

501. Executive Officers of the Council

(a) Chairman

The Chairman shall be the presiding and chief executive officer of the Council.

(b) Chairman Pro Tempore

The Chairman shall nominate in each Council period, one Councilmember to serve as Chairman Pro Tempore, who shall act in the place of the Chairman when the Chairman is absent. The Council shall, by resolution, act on the Chairman's nomination.

(c) Vacancies

Whenever a vacancy occurs in the office of the Chairman, or the Chairman is serving as Acting Mayor, the Chairman Pro Tempore elected per subsection (b) of this section shall

convene the Council, which shall elect one (1) of its at-large members as Acting Chairman and another such member as Acting Chairman Pro Tempore until said vacancy in the office of the Chairman is filled or until the return of the regularly-elected Chairman, as the case may be.

502. Secretary, General Counsel and Legislative Counsel

(a) Council Secretary

The assignment, removal and remuneration of the Council Secretary (who, as the chief administrative officer of the Council, shall be responsible for maintaining records of Council actions including the filing of bills, proposed resolutions, amendments, as are assigned to him by these Rules, Council requests for hearings, committee reports and other such items required to be filed in his office, and developing the fiscal year budget of the Council) shall be recommended by the Chairman of the Council. The assignment, removal and remuneration of the Council Secretary shall be by vote of the majority of the Council.

(b) General Counsel

The assignment, removal and remuneration of the General Counsel (who shall be responsible for advising the Council on matters of parliamentary procedure, identifying legislative problems, providing Councilmembers with various alternatives in terms of policy options to solve those

problems, representing the Council in any legal action to which it is a party and making technical and conforming changes in engrossed and enrolled measures during enrollment) shall be recommended to the Council by the Chairman. Assignment, removal and remuneration of the General Counsel shall be by vote of the majority of the Council.

(c) Legislative Counsel

The assignment, removal and remuneration of the Legislative Counsel (who shall be responsible for making legislative drafting assistance available to all Councilmembers and for engrossing and enrolling of measures including the making of such technical and conforming changes in measures as may be necessary during enrollment) shall be recommended to the Council by the Chairman. Assignment, removal and remuneration of the Legislative Counsel shall be by vote of the majority of the Council.

503. Standing Committees

The following shall be the standing committees of the Council:

(a) Committee on Human Resources

The Committee on Human Resources shall be responsible for matters concerning welfare, social services, health, public libraries, recreation, cultural affairs, youth

affairs (other than corrections) and the concerns of the aging.

(b) Committee on Housing and Economic Development

The Committee on Housing and Economic Development shall be responsible for matters related to development and maintenance of the housing stock; neighborhood improvement and stabilization; employment and manpower development; economic, industrial and commercial development; and banking regulations.

(c) Committee on Public Services and Consumer Affairs

The Committee on Public Services and Consumer Affairs shall be responsible for matters relating to government regulation of commercial, occupational and professional activities; civil rights; consumer affairs; banking activities as they relate to consumer affairs; affirmative action programs; and energy matters.

(d) Committee on Transportation and Environmental Affairs

The Committee on Transportation and Environmental Affairs shall be responsible for matters relating to transportation, highways, bridges, traffic, public transportation, regulation of vehicles and environment (waste management, water supply, environmental health, air quality and other environmental matters).

(e) Committee on Government Operations

The Committee on Government Operations shall be responsible for matters related to elections, general services, personnel and general administration of the government of the District of Columbia, and matters regarding Advisory Neighborhood Commissions.

(f) Committee on the Judiciary

The Committee on the Judiciary shall be responsible for all matters affecting the judiciary and judicial procedure which are within the authority of the Council, all matters affecting decedents' estates and fiduciary affairs, all matters affecting administrative law and procedure, all legislative matters reflecting the Council's responsibility for providing for the codification of the laws of the District of Columbia, all matters affecting criminal law and procedure, all matters arising from or pertaining to the police and fire regulations of the District of Columbia, and all other matters related to police protection, correctional institutions, fire prevention and civil defense.

(g) Committee on Finance and Revenue

The Committee on Finance and Revenue shall be responsible for matters relating to taxation and raising of revenues for operating expenses and capital expenditures of the government of the District of Columbia.

(h) Committee of the Whole

The Committee of the Whole shall be chaired by the Chairman of the Council and shall be responsible for matters pertaining to the annual executive operating and capital budget, and amendments, additions or supplements thereto; for matters pertaining to the confirmations of executive appointments; public education including the University of the District of Columbia; the District of Columbia Comprehensive Plan; Council administration and personnel; and for such matters as are assigned to it by these Rules or by the Chairman.

504. Committee Membership(s)

(a) Selection

At or near the beginning of each Council period, the Chairman shall nominate members and the Chairman of each committee of the Council. The Council shall by resolution act on the Chairman's nominations. The Chairman shall serve as an ex officio, voting member of all standing committees and may be counted for purposes of a quorum.

(b) Vacancies

Vacancies in the membership and/or chairmanship of a committee shall be filled by appointment by the Chairman with the approval of the Council.

(c) Distribution of Responsibility

The Chairman and Council shall endeavor to distribute committee responsibility as evenly as possible among the Councilmembers and in no event shall an individual Councilmember chair more than one standing committee.

505. Participation by Councilmembers in Committee Meetings and Hearings

Any Councilmember may attend the meeting of any committee and may participate in its deliberations to the extent of discussion but may not make motions or cast votes.

Any Councilmember may fully participate in the hearings of any committee.

506. Reports on Bills and Resolutions

Each Committee report with respect to a bill or a resolution shall be in writing and shall contain:

(a) A statement of the purpose and effect of the measure reported;

(b) A detailed section-by-section analysis of the bill;

(c) An estimate of its fiscal effect over a five (5) year period, when possible;

(d) Indications of the existing provisions of law which would be modified or affected by the measure if enacted;

(e) A statement of the position of the Executive Branch, if any, with respect to the proposed measure if provided to the committee by the time the committee orders the report;

(f) Dissenting, separate and individual views of members of the Committee, if the opportunity to state such views was demanded at the time the report was ordered: PROVIDED, That a member demanding the opportunity to include such views shall have not less than five (5) calendar days (not including Saturdays, Sundays and legal holidays) to present his inclusion in the report;

(g) Such additional information as the committee may direct; and

(h) A record of how each committee member voted on the motion to adopt the measure and report.

507. Rules and Procedures for Committees

(a) Each standing committee shall adopt written rules, not inconsistent with the Council Rules or other applicable law, governing its procedures incorporating the following principles:

(1) Regular meeting days, which shall be not less frequent than monthly, for conducting business;

(2) A procedure for rescheduling or cancelling a regular meeting;

(3) Additional meetings to be called by the Chairman;

(4) Special meetings to be called at the request of two (2) members of the committee or the demand of a majority thereof;

(5) Provision(s) for chairing a meeting in the absence of the Chairman;

(6) Keeping a complete record of all committee action(s) including any roll call votes;

(7) Making available, for inspection by the public, at reasonable times in the office either of the committee or of the Council a description of each amendment, motion, order or other proposition on which a roll call was taken and the name of each member voting for and against such amendment, motion, order or proposition and the names of those members present but not voting;

(8) A prohibition against proxy voting;

(9) A fixed number of members to constitute a quorum for taking testimony and receiving evidence;

(10) The five (5) minute rule in the interrogation of witnesses until such time as each member of the committee who so desires has had an opportunity to question each witness;

(11) A provision that no measure or recommendation shall be reported from the committee unless a majority of the committee was actually present; and

(12) A requirement that if, at the time of approval of any measure by a committee, any member of the committee gives notice of intention to file supplemental, minority or additional views, that member shall be entitled to not less than five (5) calendar days (not including Saturdays, Sundays and legal holidays) in which to file such views, in writing and signed by that member. All such views so filed shall be included in the report of the committee on the measure.

(b) The following provisions of these Rules shall be considered as rules of its committees and, except where the context dictates to the contrary, the word "committee" may be substituted for the word "Council", the word "Committeemember" may be substituted for the word "Councilmember" and the word "Chairman" may be treated as referring to the Chairman of the Committee: sections 101; 302(c) and (d); 303-306; 406-417; 506-507; 707; 715; 718; 720; and 808-1004.

508. Staff

(a) Subordinate Staff of Council Secretary, General Counsel and Legislative Counsel

Assignments to, removal from, and the remuneration of the professional and clerical staff of the Council Secretary, the General Counsel and the Legislative Counsel shall be made by the Secretary, the General Counsel or the Legislative Counsel, whichever is appropriate, subject to positions as allocated by the Council.

(b) Committee Staff

Assignments to, removals from and the remuneration of a committee's staff shall be recommended by that committee's chairperson to the committee for approval.

(c) Councilmembers' Personal Staffs

Assignments to, removals from and the remuneration of each Councilmember's personal staff shall be made by that Councilmember.

ARTICLE 6

AUDITOR

601. Selection

The Auditor shall be appointed by the Chairman subject to the approval of a majority of the Councilmembers.

602. Term

The Auditor shall serve for a term of six (6) years.

603. Vacancies

Vacancies in the Office of the Auditor shall be filled in the manner prescribed for full-term appointments to that office, and any person appointed to fill such a vacancy shall serve until the end of his predecessor's term.

604. Staff

The Auditor shall appoint, remove and set the relative remuneration (per his budget) of his subordinate staff.

ARTICLE 7

FLOW OF LEGISLATION

701. Form

Every bill and proposed resolution shall be introduced in type-written form, shall be signed by the Councilmember introducing it, and shall be in substantial compliance with the form required for final adoption.

702. Methods of Introduction

(a) Bills and proposed resolutions may be introduced only by a Councilmember or the Chairman. Any measure transmitted to the Council by the Mayor shall be introduced by the Chairman at the request of the Mayor.

(b) Bills and resolutions may be introduced either by:

(1) reading the short title of the bill or proposed resolution during the period of a legislative meeting of the Council designated for introductions; or

(2) filing the signed original of the bill or proposed resolution, during normal business hours, in the office of the Secretary to the Council.

(c) In addition, emergency bills and proposed resolutions pertaining thereto may be introduced at a meeting called to consider such emergency bill and proposed resolution.

(d) The Secretary to the Council shall distribute to each Councilmember a copy of each measure introduced.

703. Reading Introductions in Legislative Meetings

(a) During each legislative meeting of the Council, during the period designated for introductions, the Secretary to the Council shall read to the Council a list of the short titles and numbers of those bills and proposed resolutions which have been introduced since the immediately preceding legislative meeting. Each bill and proposed resolution shall be read by its short title, giving the number that has been assigned to it under section 704, and indicating the committee to which it has been assigned under section 705.

(b) Bills and proposed resolutions filed with and read by the Secretary to the Council, as well as bills and proposed resolutions read by Councilmembers for introduction, shall not be debated or amended at such

reading, but any member may take exception to the committee assignment of any such bill or proposed resolution, or recommend or request of the Chairman an alternative or additional committee assignment.

(c) Any decision of the Chairman regarding any committee assignment of a bill or resolution may be appealed to the whole Council in the same manner as any other decision of the Chairman which is appealable under these Rules.

704. Numbering of Introduced Measures

The Secretary to the Council shall assign a number to each introduced bill, proposed resolution, and reprogramming request at the time of introduction in a legislative meeting or when filed in the Office of the Secretary to the Council. Emergency resolutions and bills shall be numbered, as provided in this subsection, immediately upon introduction by any method described in section 702, without regard to their subsequent adoption or rejection. Numbers shall be assigned in chronological order and shall be preceded by the number of the Council Period in which the measure was introduced.

705. Committee Assignment

Upon its introduction, whether by being filed in a legislative meeting of the Council or by being filed in the

office of the Secretary to the Council, the Chairman shall assign a bill or proposed resolution to a committee for consideration according to the standard of germaneness, unless the Council retains the bill or proposed resolution: PROVIDED, That no committee may consider a measure until Councilmembers have had an opportunity to object to the assignment as provided by section 703 of these Rules. A bill or proposed resolution may be assigned to two (2) or more committees for joint or sequential consideration of the same bill or proposed resolution or parts thereof or may be assigned to other Committees for comments.

706. Referral to Executive Branch

Bills shall be referred to the Executive Branch for comment, but such comment shall not be a prerequisite for passage.

707. Amendments

An amendment to a pending bill or proposed resolution shall be introduced in writing or reduced to writing and read by the Secretary if orally moved by a Councilmember or Councilmembers in a meeting of the Council or in a meeting of a committee to which the bill or proposed resolution has been assigned.

708. Filing and Numbering of Committee Reports

Committee reports shall be filed in the office of the Secretary to the Council. At the time of filing, the Secretary to the Council shall assign a number to the report. Report numbers shall be assigned in chronological order and shall be preceded by the number of the Council period in which the report is filed.

709. Notice

The Council shall, at least fifteen (15) days prior to the adoption of any act or resolution other than a ceremonial resolution or emergency measure, publish notice of the intended action in the District of Columbia Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) so as to afford interested persons an opportunity to submit data and views either orally or in writing as may be specified in such notice: PROVIDED, That less than fifteen (15) days notice may be given upon good cause found and published with such notice; and PROVIDED FURTHER, That if emergency circumstances, as determined by the Council, necessitate the adoption of acts, resolutions and rules on an emergency basis, such acts, resolutions and rules may become effective immediately. No emergency act, resolution or rule shall remain in effect longer than ninety (90) days after its effective date.

710. Discharge

The Council may discharge a bill from committee by a vote of a majority of the Council whereupon it shall be considered by the Council.

711. Confirmation of Appointments

Confirmation of Executive Branch appointments requiring Council action received from the Executive Branch and confirmation of the appointment of the Auditor received from the Chairman shall be assigned by the Chairman to the Committee of the Whole for a hearing and a report.

712. Council Appointment to Other Bodies

Where law provides for the Council to appoint a person to another body, said person shall be appointed by the Council in acting upon a motion made by the Chairman.

713. Emergency Legislation

Where it is proposed that a bill be passed immediately due to emergency circumstances, the short title of the bill shall be read after which the Council may debate the question of the existence of an emergency and then shall vote as to whether such emergency circumstances exist, whereupon: if two-thirds (2/3) of the members of the Council find that such emergency circumstances do exist, the Council shall proceed to consider the measure on its merits.

714. Transmission of Acts

Upon adoption of an act, the Chairman shall transmit it under seal to the next level of authority (i.e., Mayor, and/or United States Senate and United States House of Representatives) as required by the Charter.

715. Reconsideration

Any Councilmember recorded as having voted with the prevailing side on a question may move to reconsider the question at any time, except that in the case of an act, such reconsideration must occur prior to the time such act has been deemed approved by the Mayor or it has been approved by operation of law or it has been vetoed, except that passage of rules of reorganization and procedure and amendments thereto shall not be open for reconsideration through this section. A motion to reconsider shall require the approval of a majority of the Councilmembers, present and voting, a majority of the Council being present. No motion to reconsider may be made with respect to a matter which has theretofore been the subject of a motion to reconsider and which was defeated.

716. Citizen Petitions

Any interested person petitioning the Council requesting the promulgation, amendment or repeal of any act, resolution or rule shall submit such petition, in a form prescribed by the Council, to the office of the Chairman who shall assign

it to an appropriate committee per section 705 of these Rules to take whatever action it deems appropriate, and report the same to the person requesting the action.

717. Filing and Publication of Adopted Measures

Except in the case of emergency acts, resolutions and rules, each act, resolution or rule adopted by the Council shall be filed in the Office of the Mayor. No such non-emergency act, resolution or rule shall become effective until after its publication in the District of Columbia Register.

718. Records

(a) The Secretary to the Council shall maintain accurate and up-to-date records of all official Council records, including, but not limited to: bills, proposed resolutions, amendments to bills and resolutions, committee reports on measures, Council acts and D.C. Laws.

(b) Copies of all official Council records shall be available for public inspection during normal business hours and shall be available for reproduction and distribution to the public upon request.

719. Numbering of Adopted Measures and D.C. Laws

(a) Upon the final adoption of measures by the Council, and prior to transmitting those measures which are transmitted to the Mayor for his approval, the Secretary to

the Council shall assign numbers to adopted acts and resolutions.

(b) Upon the expiration of the thirty (30) day Congressional review period for Council acts, as provided in the Charter, the Secretary to the Council shall assign a D.C. Law number to the effective measure.

(c) Numbers assigned to adopted measures and D.C. Laws shall be assigned in chronological order and shall be preceded by the number of the Council period in which the measure was adopted.

720. Measures Not Reached and Measures Considered During Previous Council Periods

(a) Lapse

Any bill, proposed resolution or other measure pending before the Council and not passed or finally adopted by the Council before the end of the Council period in which it was introduced, shall lapse without prejudice to its reintroduction in a subsequent Council Period: PROVIDED, That no legislative enactment of any kind which has been passed by the Council shall lapse simply because its subsequent approval or veto by the Mayor, approval by operation of law, reenactment after veto by the Mayor, submission to referendum and/or transmission to the Congress may take place in a subsequent Council Period.

(b) Incorporation by Reference

The Council may incorporate by reference the records of similar bills, proposed resolutions or other measures which lapsed at the end of a previous Council period and which are substantially similar to measures being considered in a later Council period.

ARTICLE 8

HEARINGS AND INVESTIGATIONS

801. Hearings

(a) Calling

The Council or any Committee shall hold hearings if called by the Chairman or the Committee Chairman prior to the passage of any bill or proposed resolution and in such other instances as are required by law.

(b) Opportunity for Questioning

Each Councilmember shall have no more than five (5) minutes for questions and answers with each witness until after each Councilmember has had one (1) opportunity to examine that witness.

(c) Decorum

(1) Necessity of Addressing Chairman

No speaker may address a Councilmember except through the Chairman conducting the hearing.

(2) Scope of Remarks

Each speaker shall confine his or her remarks to the question under discussion or debate, avoiding personalities.

(3) Maintenance of Order

The Chairman conducting the hearing shall maintain order in the Council Chamber, and, if in his opinion, the removal of any member of the public is necessary in order to maintain order, he may, after warning, order the removal of any disorderly person.

802. Investigations

(a) Scope

Each committee of the Council shall have the authority to investigate any matter relating to the affairs of the District which arises within such committee's jurisdiction. In addition, the Council, at any time, may authorize any committee or person to investigate any matter relating to the affairs of the District. For purposes of any such investigations, the Council or the committee conducting such investigation(s) may require the attendance and testimony of witnesses and the production of books, papers and other evidence, and each member of the Council may administer oath(s) in connection with such testimony: PROVIDED, That the Committee of the Whole has received from the committee intending to issue subpoenas a report outlining the nature

and scope of the investigation(s) and the type of evidence sought through use of a subpoena.

(b) Enforcement of Subpoenas

In case of contumacy by or refusal to obey a subpoena issued to any person, the Council may by resolution refer the matter to the Superior Court of the District of Columbia.

(c) Coordination

The Chairman of the Council and the Chairmen of the committees shall keep the Council informed as to pending or projected investigations undertaken or planned by the Council and each of the committees, with a view to minimizing duplication or overlap and, in the event of a dispute between committees, the matter shall be settled by the Council.

ARTICLE 9

GENERAL NOTICE PROVISIONS

901. Methods

Where not otherwise required by these Rules or other provisions of law to be done in specific fashion, notice of intended action(s), hearing(s) and meeting(s) may be given by:

(a) Posting in prominent places in the District Building or other public buildings or public posting places;

(b) Publication in a newspaper or newspapers of general circulation;

(c) Printing in the District of Columbia Register;

(d) Mailing notices to an established mailing list of organizations and individuals as established and maintained by the Secretary to the Council;

(e) Notices through other media; and/or

(f) In any other manner the Council considers appropriate.

902. Time

Whenever appropriate, written notice of Council hearings shall be provided not less than fifteen (15) days prior to the date of the hearing.

ARTICLE 10

RULES

1001. Gender Rules of Construction

Words importing one gender include and apply to the other gender as well.

1002. Matters Not Covered by These Rules

Any matter not covered by these Rules shall be governed by Robert's Rules of Order, or, if not covered by Robert's

Rules of Order, by the decision of the Chairman subject to the right of appeal by any member per section 407 of these Rules.

1003. Suspension

Except as to matters of notice, quorum and except where a Rule or subsection thereof sets forth a requirement of the Charter or other law, these Rules or any part thereof may be suspended during consideration of a specified matter by motion to suspend these Rules and seconded and approved by two-thirds (2/3) of the Councilmembers present and voting.

1004. Amendment

These Rules shall be effective until superseded by Rules of Organization and Procedure adopted in the Council period pursuant to section 301 of these Rules: PROVIDED, That any Rule or Rules may be amended before then by a vote of a majority of the Council; and PROVIDED FURTHER, That the amendment be proposed in writing and signed and circulated to all Councilmembers and posted in a conspicuous spot in a public area of the District Building at least fifteen (15) days prior to its consideration unless ten (10) Councilmembers vote to waive or shorten said fifteen (15) days period.

COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, D. C. 20004

RECORD OF OFFICIAL ACTION

Reference: PR 3-1 Resolution No. 3-53

Date of Consideration: 3-27-79

Motion Presented: To Adopt By: Dixon

☐ ROLL CALL VOTE — Result: _____ (__/__/__/__)

RECORD OF COUNCIL VOTE

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
Dixon					Mason					Spaulding				
Winter					Moore					Wilson				
Clarke					Ray									
Hardy					Polark									
Vace					Shackleton									

X—Indicates Vote A. B.—Absent N. V.—Not Voting

☒ VOICE VOTE — Result: Unanimous

Absent: All Present

Recorded vote: _____
(on request)

CERTIFICATION OF RECORD

Ruth D. Robinson
Secretary to the Council

4/4/79
Date

APPENDIX C

EMERGENCY ACTS ADOPTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA (1975–80)

COUNCIL PERIOD 1 (1975–77)

Emergency acts	Title and date enacted	Effective date	Expiration date[1]
1–1	To amend the District of Columbia Unemployment Compensation Act to provide for certain emergency unemployment compensation (Jan. 22, 1975).	Jan. 22, 1975	
1–4	To modify the vending regulation (No. 74–39) with regard to ice cream vendors (Mar. 10, 1975).	Mar. 10, 1975	
1–12	To extend, on an emergency basis, the rent control program (Apr. 24, 1975) (bill No. 1–59).	Apr. 24, 1975	
1–13	To strongly urge a 60-day cooling off period between the District of Columbia Board of Education and the Superintendent of Schools (May 6, 1975).	May 6, 1975	
1–17	Condominium Conversion Moratorium Extension Act (May 28, 1975)	May 28, 1975	
1–25	To extend the effective date of the District of Columbia Public Post-Secondary Education Reorganization Act (June 19, 1975).	June 19, 1975	
1–32	To preserve the health of the residents of the Arthur Capper and Cardozo areas (Mayor's veto July 11, 1975 overriden on July 15, 1975).	July 15, 1975	
1–35	To extend, on an emergency basis, the rent control program (July 25, 1975).	July 25, 1975	
1–41	Temporary Municipal Code Suspension Act of 1975 (Aug. 13, 1975).	Aug. 13, 1975	
1–44	Emergency, Tax Incentive Time of Deliberation Act (Aug. 15, 1975).	Aug. 15, 1975	
1–53	Emergency, Advisory Neighborhood Commission Electon Act of 1976 (Oct. 8, 1975).	Oct. 8, 1975	
1–55	Emergency, Extension of the Appeal Time of Real Property Tax Assessments to the Superior Court of District of Columbia Act (Oct. 10, 1975).	Oct. 10, 1975	
1–58	Emergency, Transitional Rent Stabilization Act (Oct. 24, 1975)	Oct. 24, 1975	
1–60	District of Columbia Flood Insurance Implementation Act (Oct. 29, 1975)	Oct. 29, 1975	
1–63	District of Columbia Emergency Act on Reporting of Child Abuse (Nov. 7, 1975).	Nov. 7, 1975	
1–66	Emergency, District of Columbia Boxing and Wrestling Commission Act Amendment Act (Nov. 10, 1975).	Nov. 10, 1975	
1–76	Federal Payment Authorization, Emergency Act for Fiscal Year 1977 (bill No. 1–207) (Dec. 11, 1975).	Dec. 11, 1975	
1–77	Emergency, Standards of Assistance for Public Assistance Applicants and Recipients Act (Dec. 15, 1975).	Dec. 15, 1975	
1–78	Emergency, Amended Unincorporated Business Franchise Tax Revision Act of 1975 (Dec. 18, 1975).	Dec. 18, 1975	
1–79	Emergency, Professional Corporation Revision Act of 1975 (Dec. 18, 1975)	do	
1–80	Emergency, 3d amendment to the Revenue Act of 1975 (Dec. 19, 1975)	Dec. 19, 1975	
1–82	Emergency, 4th amendment to the Revenue Act of 1975 (Jan. 6, 1976)	Jan. 6, 1976	
1–86	District of Columbia Boxing and Wrestling Commission Nominees Review, Emergency Act (Mayor's veto overridden Jan. 19, 1976).	Jan. 19, 1976	
1–90	Emergency, Cooperative Conversion Moratorium Act (Feb. 6, 1976)	Feb. 6, 1976	
1–96	Regulations to Establish and Apply Standards of Acceptance for Public Assistance Applicants and Recipients.	Mar. 19, 1976	
1–99	2d emergency, 3d amendment to the Revenue Act of 1975 (Mar. 27, 1976)	Mar. 24, 1976	
1–100	Emergency Act, to Provide for Proper Notice Governmental Action to the Advisory Neighborhood Commissions (Mar. 27, 1976).	Mar. 26, 1976	
1–101	Lease and Grievance Procedures, Emergency Act (Mar. 29, 1976)	Mar. 29, 1976	
1–103	Horizontal Property Rerime Regulation Amendments of 1976 (Mar. 30, 1976)	Mar. 30, 1976	
1–110	Emergency, District of Columbia Teachers' Salary Act Amendments of 1976 (Apr. 27, 1976).	Apr. 27, 1976	
1–111	Emergency, District of Columbia Police and Firemen's Salary Act Amendments of 1976 (Apr. 27, 1976).	do	
1–112	2d emergency, Cooperative Conversion Moratorium Act of 1976 (bill No. 1268) (May 6, 1976).	May 6, 1976	
1–114	Emergency, 1st amendment to the Fiscal Year 1977 Budget Act (May 10, 1976)	May 10, 1976	
1–115	2d emergency, Condominium Conversion Moratorium Extension Act of 1976 (bill No. 1–269) (May 11, 1976).	May 11, 1976	
1–117	Vending Regulation Amendment Act (May 14, 1976)	May 14, 1976	
1–119	Emergency, District of Columbia Public Postsecondary Education Reorganization Amendments Act of 1976 (May 14, 1976).	do	
1–121	Emergency, Historic Sites Subdivision Amendment of 1976 (bill No. 1–228) (May 14, 1976).	do	
1–122	2d emergency, Revenue Act of 1976 amendment (May 21, 1976)	May 21, 1976	
1–123	Licensure of Postsecondary Educational Institutions Act (May 24, 1976)	May 24, 1976	

See footnotes at end of table.

EMERGENCY ACTS ADOPTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA (1975–80)

COUNCIL PERIOD 1 (1975–77)—Continued

Emergency acts	Title and date enacted	Effective date	Expiration date [1]
1–124	1st emergency, Revenue Act of 1976 amendment (bill No. 1–279) (May 24, 1976).	May 24, 1975	
1–125	Emergency, Vendors' Regulation Amendment Act of 1976 (May 25, 1976)	May 25, 1976	
1–126	Emergency act, to Preserve the Habitability of Rental Units Subject to Notices to Vacate (May 26, 1976).	May 26, 1976	
1–127	License fees and charges, Emergency Act of 1976 (June 1, 1976)	June 1, 1976	
1–128	Emergency, Amendment to the Horizontal Property Act and Regulations of the Dist ict of Columbia (June 2, 1976).	June 2, 1976	
1–129	Emergency, Supplementary Neighborhood Commissions Act (June 4, 1976)	June 4, 1976	
1–136	Emergency, Dist.ict of Columbia Paternity and Child Support Amendments Act (June 25, 1976).	June 25, 1976	
1–138	2d emergency, District of Columbia Teachers Salary Act Amendments of 1976 (July 2, 1976).	July 2, 1976	
1–139	Campaign Finance and Conflict of Interest, Emergency Act (July 19, 1976)	July 19, 1976	
1–140	Emergency, Standards of Assistance Increase Act (July 19, 1976)	do	
1–144	Emergency, Condominium Regulation Act (July 30, 1976)	July 30, 1976	
1–145	Emergency, District of Columbia Public Postsecondary Education Reorganization Act Amendments Extension Act of 1976 (Aug. 12, 1976).	Aug. 12, 1976	
1–146	2d emergency, Historic Sites Subdivision Amendment of 1976 (Aug. 12, 1976)	do	
1–147	Emergency, Vendors' Regulation Amendment Act of 1976 (Aug. 13, 1976)	Aug. 13, 1976	
1–148	Emergency, Rental Accommodations Act amendment (Aug. 12, 1976)	July 27, 1976	
1–149	2d emergency, Act to Preserve the Habitability of Rental Units Subject to Notices to Vacate (Aug. 24, 1976).	Aug. 24, 1976	
1–150	2d License Fees and Charges, Emergency Act of 1976 (Aug. 26, 1976)	Aug. 26, 1976	
1–153	General Public Assistance Benefits Limitation, Emergency Act (Sept. 30, 1976)	Sept. 30, 1976	
1–154	Increase of Public Assistance Payments Act of 1976 (Oct. 5, 1976)	Oct. 5, 1976	
1–155	2d emergency, District of Columbia Paternity and Child Support Amendments Act (Oct. 5, 1976).	do	
1–156	3d emergency, District of Columbia Teachers' Salary Act Amendments of 1976 (Oct. 8, 1976).	Oct. 8, 1976	
1–157	Emergency act, regarding the Notice Requirements to Advisory Neighborhood Commissions Concerning Applications for Certain Licenses and Permits (Oct. 8, 1976).	do	
1–164	District of Columbia Youth Services, Emergency Act (Oct. 22, 1976)	Oct. 22, 1976	
	1–165 1st Extension of the Emergency Condominium Regulation of 1976 (Oct. 28, 1976).	Oct. 28, 1976	
1–166	2nd emergency, of District Columbia Public Post-Secondary Education Reorganization Act Amendment Extension Act of 1976 (Nov. 2, 1976).	Nov. 2, 1976	
1–167	Rental of Public Surface and Subsurface Space, Emergency Act (Nov. 2, 1976).	do	
1–168	Emergency, District of Columbia Public Assistance Regulation Revising the definition of certain terms of the financial and medical assistance programs (Nov. 2, 1976).	do	
1–176	Emergency, District of Columbia Fire Department Operations Act of 1976 (Nov. 18, 1976).		[2]
1–180	Emergency, Vendors' Regulation Amendment Act of 1976 (Dec. 3, 1976)	Dec. 3, 1976	
1–181	3d Emergency Act, to Preserve the Habitability of Rental Units Subject to Vacate (Dec. 3, 1976).	do	
1–182	Emergency, Special Regulation for Inaugural Period 1977 (Dec. 16, 1976)	Dec. 16, 1976	
1–183	4th emergency, District of Columbia Teachers' Salary Act amendments (Dec. 28, 1976).	Dec. 28, 1976	
1–184	Emergency, Street and Alley Closing Act (Dec. 29, 1976)	Dec. 29, 1976	
1–185	Emergency, Household and Dependent Care Services Deduction Act (Dec. 30, 1976).	Dec. 30, 1976	
1–186	Emergency, Air Quality Control Regulations Amendment No. 1 Act (Dec. 30, 1976).	do	
1–188	2nd emergency, General Public Assistance for Unemployables Benefits Limitation Act (Dec. 29, 1976).	Dec. 29, 1976	
1–189	Emergency, Cooperative Regulation Act (January 3, 1977)	Jan. 3, 1977	
1–191	3d emergency District of Columbia Paternity and Child Support Amendments Act (Jan. 4, 1977).	Jan. 4, 1977	
1–192	Emergency, Day Care Policy Act (Jan. 4, 1977)	do	
1–196	Emergency Act, to Amend the Firearms Control Regulations Act of 1975 (Jan. 3, 1977).	do	
		do	
1–197	3d emergency, Increase of Public Assistance Payments Act (Jan. 10, 1977)	Jan. 3, 1977	
1–199	Additional Teachers Salary (Jan. 11, 1977)	Jan. 11, 1977	
1–200	Fiscal Year 1977 Supplemental Budget and Fiscal Year 1978 Budget amendment (EA 1–80) (Jan. 11, 1977).	Jan. 7, 1977	
1–202	Consumer Goods Repair Board (EA 1–90) (Jan. 11, 1977)	Jan. 11, 1977	
1–210	Relocation Regulation (Jan. 12, 1977)	Jan. 12, 1997	
1–212	Codification Amendment (Jan. 12, 1977)	do	
1–213	Relocation Regulation (Jan. 12, 1977)	do	
1–214	Resocialization Furlough (EA 1–91) (Jan. 12, 1977)	do	
1–215	Elections/Latino Amendment (EA 1–77) (Jan. 12, 1977)	do	
1–218	Revised Health Fees Act of 1976 (EA 1–89) (Jan. 14, 1977)	Jan. 14, 1977	

See footnotes at end of table.

EMERGENCY ACTS ADOPTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA (1975–80)

COUNCIL PERIOD 2 (1977–78)

Emergency acts	Title and date enacted	Effective date	Expiration date [1]
2-1	2d extension of the Emergency Condominium Regulation Act of 1976 (Jan. 26, 1977).	Jan. 26, 1977	
2-2	2d Emergency, District of Columbia Public Assistance Regulation Revising the Definition of Certain Terms of the Financial and Medical Assistance Programs (Jan. 31, 1977).	Jan. 31, 1977	
2-3	Emergency, Rental Accommodations Act Amendments (Feb. 9, 1977)	Feb. 9, 1977	
2-4	Emergency, Residential Parking Tax Exemption Act of 1977 (Feb. 15, 1977)	Feb. 15, 1977	
2-5	2d Rental of Public Surface and Subsurface Space, Emergency Act (Feb. 15, 1977).	do	
2-6	3d emergency, District of Columbia Postsecondary Education Reorganization Act Amendments Extension Act of 1977 (Feb. 15, 1977).	do	
2-7	Closing of the Public Alley System in Square 551, Emergency Act (Mar. 15, 1977).	Mar. 15, 1977	
2-8	Closing of Clifton St. NW., Emergency Act (Mar. 15, 1977)	do	
2-9	Closing of Neal Place NW., 4th St. NW. (Mar. 15, 1977)	do	
2-10	Emergency, Vendors Regulation Amendment Act (Mar. 16, 1977)	Mar. 16, 1977	
2-11	1977 Emergency Act, to Preserve the Habitability of Rental Units Subject to Notices to Vacate (Mar. 16, 1977).	do	
2-13	Emergency, Cooperative Regulation Act (Mar. 18, 1977)	Mar. 18, 1977	
2-14	3d emergency, General Public Assistance for Unemployables Benefits Limitation Act (Mar. 28, 1977).	Mar. 28, 1977	
2-15	Emergency, Collection of Insurance Fees and Premium Taxes Act (Mar. 28, 1977).	do	
2-16	4th emergency, Increase of Public Assistance Payments Act (Mar. 29, 1977)	Mar. 29, 1977	
2-17	Emergency, Household and Dependent Care Services Deduction Act (Mar 30, 1977).	Mar. 30, 1977	
2-20	Emergency, Air Quality Control Regulations Amendment Act of 1977 (Mar. 31, 1977).	Mar. 31, 1977	
2-26	2d emergency, Day Care Policy Act (Apr. 4, 1977)	Apr. 4, 1977	
2-29	Consumer Goods Repair Board, Emergency Act of 1977 (Apr. 7, 1977)	Apr. 7, 1977	
2-30	2d emergency, Advisory Neighborhood Commissions Additional Notice Act (Apr. 13, 1977).	Apr. 13, 1977	
2-31	Revised Health Fees, Emergency Act of 1977 (Apr. 13, 1977)	Apr. 14, 1977	
2-34	Emergency, Street and Alley Closing Act of 1977 (May 2, 1977)	May 2, 1977	
2-36	Fiscal yea: 1977 2d Supplemental Budget and Fiscal Yea: 1978 Budget Amendment (May 19, 1977; Council enacted over Mayor's veto).	May 19, 1977	
2-37	Emergency Act, to Provide for Amendments to the District of Columbia Motorized Bicycle Act and the Revenue Act for Fiscal Year 1978 (May 24, 1977).	do	
2-41	2d emergency, Collection of Insurance Fees and Premium Taxes Act of 1977 (May 24, 1977).	May 24, 1977	
2-43	Rent Administrator, Emergency, Delegation Act of 1977 (June 8, 1977)	June 8, 1977	
2-45	Emergency, Advisory Neighborhood Commissions Act of 1977 (June 9, 1977)	June 9, 1977	
2-47	2d emergency, Cooperative Regulation Act of 1977 (June 17, 1977)	June 17, 1977	
2-50	To enact on an emergency basis amendments to the Standards of Assistance of the District of Columbia relating to the distribution of payments to persons residing in adult foster homes (June 30, 1977).	June 30, 1977	
2-55	Emergency, Advanced Life Support Act of 1977 (July 8, 1977)	July 8, 1977	
2-57	3d emergency, Advisory Neighborhood Commission Additional Notice Act (July 12, 1977).	July 12, 1977	
2-58	2d Revised Health Fees, Emergency Act of 1977 (July 13, 1977)	July 13, 1977	
2-65	Emergency, Water and Sewer Bill Payment Act (Aug. 3, 1977)	Aug. 2, 1977	
2-66	Emergency, Education Licensure Commission Act (Aug. 3, 1977)	do	
2-69	Emergency, Residential Property Tax Relief Act of 1977 (Aug. 10, 1977)	Aug. 10, 1977	
2-70	Emergency, Real and Personal Property Tax Rates Act for Tax Year 1978 (Aug. 10, 1977).	do	
2-72	Emergency, Firearms Control Regulations Act Technical Amendments Act of 1977 (EA 2-44) (Aug. 11, 1977).	Aug. 11, 1977	
2-73	3d emergency, Collection of Insurance Fees and Premium Taxes Act of 1977 (EA 2-40) (Aug. 11, 1977).	do	
2-74	2d emergency, Street and Alley Closing Act of 1977 (EA 2-38) (Aug. 12, 1977)	Aug. 12, 1977	
2-75	1st extension of the Rent Administrator Emergency, Delegation Act of 1977 (EA 2-42) (Aug. 16, 1977).	Aug. 16, 1977	
2-76	School Transit Subsidy, Emergency Act of 1977 (EA 2-37) (Aug. 18, 1977)	do	
2-80	2d Emergency Act, to Provide for Amendment to the District of Columbia Motor-Sized Bicycle Act and the Revenue Act for Fiscal Year 1978 (EA 2-39) Aug. 17, 1977.	Aug. 17, 1977	
2-81	Emergency, Relocation Regulation Act of 1977 (EA 2-43) (no action)	do	
2-82	2d Advisory Neighborhood Commissions Vacancy, Emergency Act of 1977 (EA 2-41) (no action).	do	
2-84	Standards of Assistance to Persons Residing in Adult Foster Homes, 2d Emergency Act of 1977 (EA 2-45) (Oct. 1, 1977).	Oct. 3, 1977	
2-85	Emergency, Vendors Regulation Amendment Extension Act of 1977 (Oct. 11, 1977).	Oct. 11, 1977	
2-86	4th emergency, Advisory Neighborhood Commissions Additional Notice Act (EA 2-47) (Oct. 12, 1977).	Oct. 12, 1977	
2-88	3d emergency, Cooperative Regulations Act of 1977 (EA 2-48) (no action)	do	
2-89	District of Columbia General Hospital Audit Amendment, Emergency Act of 1977 (EA 2-49) (Oct. 13, 1977).	Oct. 13, 1977	

See footnotes at end of table.

EMERGENCY ACTS ADOPTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA (1975–80)

COUNCIL PERIOD 2 (1977–78)—Continued

Emergency acts	Title and date enacted	Effective date	Expiration date [1]
2–90	District of Columbia Police, Firemen, and Teachers Salary Act Amendment, Emergency Act of 1977 (EA 2–51) (Oct. 13, 1977).	Oct. 13, 1977	
2–91	Closing of an Alley in Square 1192, Emergency Act of 1977 (EA 2–50) (Oct. 19, 1977).	Oct. 19, 1977	
2–93	1st emergency, Extension of District of Columbia, District of Columbia Law No. 1–33 of 1977 (EA 2–54) (Oct. 31, 1977).	Oct. 31, 1977	
2–94	Emergency, Amendments to the Initiative, Referendum, and Recall Charter Amendments Act of 1977 (EA 2–55) (Nov. 1, 1977).	Nov. 1, 1977	
2–95	Emergency, Amendment of District of Columbia Law 2–15 (EA 2–58) (Nov. 1, 1977).	do	
2–104	2d School Transit Subsidy, Emergency Act of 1977 (EA 2–56) (Nov. 23, 1977)	Nov. 23, 1977	
2–105	2d emergency, Firearms Control Regulations Act Technical Amendments Act of 1977 (EA 2–53) (Nov. 23, 1977).	do	
2–107	Fiscal Year 1979 Budget Request Act (2–207), (Dec. 9, 1977)	Nov. 29, 1977	
2–108	2d emergency, Real and Personal Property Tax Rates Act for Tax Year 1978 (EA 2–60) (Dec. 1, 1977).	Dec. 1, 1977	
2–109	3d Emergency Act, to Provide for Amendments to the District of Columbia Motorized Bicycle Act and the Revenue Act for Fiscal Year 1978 (EA 2–63) (Dec. 2, 1977).	Dec. 2, 1977	
2–111	2d emergency, Residential Property Tax Relief Act of 1977 (EA 2–59) Dec. 5, 1977).	Dec. 5, 1977	
2–112	2d emergency, Water and Sewer Bill Payment Act of 1977 (EA 2–61) Dec. 5, 1977).	do	
2–114	3d emergency, Street and Alley Closing Act of 1977 (EA 2–62) (Dec. 7, 1977)	Dec. 7, 1977	
2–115	Emergency, New Vendors Prepayment Act of 1977 (EA 2–57) (returned Dec. 9, 1977).	Dec. 9, 1977	
2–116	To Amend the Condominium Act of 1977 (EA 2–64) (returned Dec. 9, 1977)	do	
2–119	District of Columbia Police, Firefighters, and Teachers Salary Act amendments, 2d Emergency Act of 1977 (EA 2–68) (Dec. 15, 1977).	Dec. 15, 1977	
2–123	District of Columbia General Hospital Audit Amendment, 2d Emergency Act of 1977 (EA 2–67) (not signed).	Dec. 27, 1977	
2–124	Standard Assistance to Persons Residing in Adult Foster Homes, 3d Emergency Act of 1977 (EA 2–65) (Dec. 29, 1977).	Dec. 28, 1977	
2–125	Emergency, Vendors' Regulation Amendment, 2d Extension Act of 1977 (EA 2–65) (Dec. 29, 1977).	Dec. 29, 1977	
2–126	Emergency, District of Columbia Unemployment Compensation Act Amendments of 197 (EA 2–60) (Dec. 29, 1977).	do	
2–139	1st emergency, Extension of District of Columbia Law No. 1933 of 1978 (EA 2–79) (Jan. 30, 1978).	Jan. 30, 1978	Apr. 30, 1978
2–140	Extension of the emergency amendment to the Initiative, Referendum, and Recall Charter Amendment Act of 1977 (EA 2–76) (Jan. 30, 1978).	do	D9.
2–141	Closing of a Public Alley in Square 419, Emergency Act of 1978 (EA 2–74) (Feb. 1, 1978).	Feb. 1, 1978	May 2, 1978
2–143	Closing of an Alley in Square 1192, Emergency Act of 1978 (EA 2–73) (Feb. 1, 1978).	do	Do.
2–144	University of the District of Columbia, Emergency, Personnel Act (EA 2–71) (no action).	Feb. 3, 1978	May 4, 1978
2–146	Closing of part of 3d and L Sts. NW., in Square 556, Emergency Act of 1977 (EA 2–75) (Feb. 3, 1978).	do	Do.
2–147	Closing of the Public Alley System in Square 395, Emergency Act of 1977 (EA 2–72) (Feb. 3, 1978).	do	Do.
2–150	Emergency, Equal Rights Amendment Convention Boycott Act of 1978 (EA 2–77) (Feb. 18, 1978).	Feb. 13, 1978	May 14, 1978
2–151	District of Columbia Equal Rights Amendment, Emergency, Ratification Act of 1978 (EA 2–78) (Feb. 13, 1978).	do	Do.
2–154	3d emergency, Real and Personal Property Tax Rates Act for Tax Year 1978 (EA 2–86) (Mar. 2, 1978).	Mar. 2, 1978	May 31, 1978
2–155	School Transit Subsidy, Emergency Act of 1978 (EA 2–82) (Feb. 28, 1978)	Feb. 28, 1978	May 29, 1978
2–157	Emergency, Water and Sewer Bill Payment Act of 1978 (EA 2–83) (Mar. 10, 1978).	Mar. 10, 1978	June 8, 1978
2–159	Condominium Conversion, Emergency Act of 1978 (EA 2–89) (Mar. 10, 1978)	do	Do.
2–160	District of Columbia Police, Firefighters' and Teachers' Salary Act Amendment, Emergency Act of 1978 (EA 2–91) (Mar. 15, 1978).	Mar. 15, 1978	June 13, 1978
2–161	Standards of Assistance to Persons Residing in Adult Foster Homes, Emergency Act of 1978 (EA 2–81) (Mar. 16, 1978).	Mar. 16, 1978	June 14, 1978
2–162	Emergency Act, to Provide for Amendments to the District of Columbia Motorized Bicycle Act and the Revenue Act for Fiscal Year 1978 (EA 2–88) (Mar. 16, 1978).	do	Do.
2–163	Emergency, Street and Alley Closing Act of 1978 (EA 2–85) (Mar. 16, 1978)	do	Do.
2–164	Emergency, New Vendors Prepayment Extension Act of 1978 (EA 2–90) (Mar. 16, 1978).	do	Do.
2–165	District of Columbia Disabled Veterans Exemption, Emergency Act of 1978 (EA 2–96) (Mar. 28, 1978).	Mar. 28, 1978	June 26, 1978
2–166	2d emergency, District of Columbia Unemployment Compensation Act Amendments of 1978 (EA 2–93) (Mar. 28, 1978).	do	Do.
2–167	Closing of a Public Alley in Square 163, Emergency Act of 1978 (EA 2–97) (Mar. 29, 1978).	Mar. 29, 1978	June 27, 1978
2–168	Closing of a Public Alley in Square 100, Emergency Act of 1978 (EA 2–98) (Mar. 19, 1978).	do	Do.

See footnoter at end of table.

EMERGENCY ACTS ADOPTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA (1975–80)

COUNCIL PERIOD 2 (1977–78) Continued

Emergency acts	Title and date enacted	Effective date	Expiration date[1]
2–169	Emergency, Advisory Neighborhood Commission Election Act of 1978 (EA 2–92) (Mar 31, 1978).	Mar. 31, 1978	June 29, 1978
2–170	District of Columbia General Hospital Commission Act, Emergency Amendments of 1978 (EA 2–94) (Mar. 31, 1978).	____do____	Do.
2–171	2d emergency, Cooperative Regulation Act of 1978 (EA 2–84) (Apr. 3, 1978)	Apr. 3, 1978	July 2, 1978
2–174	Extension of Notice to Vacate, Emergency Act of 1978 (EA 2–102) (Apr. 10, 1978).	Apr. 10, 1978	July 9, 1978
2–175	District of Columbia emergency, Educational Institution License Extension Act of 1978 (EA 2–95) (Apr. 13, 1978).	Apr. 13, 1978	July 12, 1978
2–176	School Transit Subsidy, Emergency Act of 1978 Emergency Amendment Act (EA 2–99) (Apr. 13, 1978).	____do____	Do.
2–188	Emergency Act, to Demonstrate Support for Affirmative Action in the District of Columbia and to Proclaim the Week of Apr. 9 through Apr. 15, 1978, as the "National Week to Overturn the Bakke Decision" (EA 2–101) (Apr. 27, 1978).	Apr. 27, 1978	July 26, 1978
2–190	Fiscal Year 1978 2d Budget Amendment and the Fiscal Year 1979 1st Budget Amendment, Emergency Act (EA 2–100) (May 10, 1978).	May 10, 1978	Aug. 8, 1978
2–191	1st emergency, Biannual Mass Mail Registration Applications Mailing Requirement Repeal Act of 1978 (EA 2–103) (May 11, 1978).	May 11, 1978	Aug. 9, 1978
2–192	2d Closing of Parts of 3d and L Sts. NW., in Square 556, Emergency Act of 1978 (EA 2–105) (May 11, 1978).	____do____	Do.
2–193	2d Closing of the Public Alley System in Square 395, Emergency Act of 1978 (EA 2–106) (May 11, 1978).	____do____	Do.
2–194	Technical Amendments to the Emergency Advisory Neighborhood Commission Election Act (EA 2–101) (May 11, 1978).	____do____	Do.
2–198	1st Extension of Notice to Vacate, Emergency Amendment Act of 1978 (EA 2–107) (May 22, 1978).	May 22, 1978	Aug. 20, 1978
2–201	Official Purposes Funds, Emergency Act of 1978 (EA 2–108) (June 7, 1978)	June 7, 1978	Sept. 4, 1978
2–203	2d emergency, Water and Sewer Bill Payment Act of 1978 (EA 2–111) (June 9, 1978).	June 9, 1978	Sept. 6, 1978
2–204	Condominium Conversion, Emergency Act (EA 2–112) (June 9, 1978)	____do____	Do.
2–209	Standards of Assistance to Persons Residing in Adult Foster Homes, 2d Emergency Act of 1978 (EA 2–110) (June 27, 1978).	June 21, 1978	
2–210	Robert J. Pierce, Emergency Act of 1978 (EA 2–105) (June 27, 1978)	June 27, 1978	
2–211	Drug Price Posting, Emergency Act of 1978 (EA 2–113) (June 27, 1978)	____do____	
2–213	Home Purchase Assistance Fund, Emergency Authorization Act of 1978 (EA 2–130) (July 1, 1978).	July 1, 1978	Sept. 29, 1978
2–216	District of Columbia Traffic Adjudication, Emergency Act of 1978 (EA 2–127) (July 1, 1978).	____do____	Do.
2–219	Public Accountancy Act (EA 2–119) (July 5, 1978)	July 5, 1978	Oct. 4, 1978
2–220	Emergency, New Vendors Prepayment, 2d Extension Act of 1978 (EA 2–113) (July 3, 1978).	July 3, 1978	
2 221	District of Columbia Business Corporation Act, Emergency Amendments of 1978 (EA 2–117) (July 5, 1978).	July 5, 1978	
2–223	Standard Valuation and Nonforfeiture Amendment, Emergency Act of 1978 (EA 2–125) (July 7, 1978).	July 6, 1978	
2–224	1st emergency, Interest Rate Extension Act of 1978 (EA 2–126) (June 27, 1978).	July 7, 1978	Oct. 6, 1978
2–225	Act Increasing the Interest Rate from 10 Percent to 11 Percent (EA 2–125) (June 27, 1978).	____do____	Do.
2–226	District of Columbia Hospital Commission Act, 2d Emergency Amendments of 1978 (EA 2–114) (July 13, 1978).	July 10, 1978	
2–227	3d emergency, District of Columbia Unemployment Compensation Act Amendment of 1978 (EA 2–115).	____do____	
2–228	School Transit Subsidy, Emergency Act of 1978 (EA 2–120) (July 13, 1978)	July 13, 1978	Oct. 12, 1978
2–233	Closing of a Public Alley in Square 163, 2d Emergency Act of 1978 (EA 2–121) (July 17 1978).	July 17, 1978	Oct. 15, 1978
2–234	2d emergency, Biannual Mass Mail Registration Applications Mailing Requirement Repeal Act of 1978 (EA 2–129) (July 17, 1978).	____do____	Do.
2–235	Closing of a Public Alley in Square 100, 2d Emergency Act of 1978 (EA 2–123) (July 17, 1978).	____do____	Do.
2–238	District of Columbia 2d emergency, Educational Institution License Extension Act of 1978 (EA 2–121) (July 17, 1978).	____do____	Do.
2–239	3d emergency, Cooperative Regulation Act of 1978 (EA 2–128) (July 17, 1978)	____do____	Do.
2–240	2d emergency, Advisory Neighborhood Commissions Election Act of 1978 (EA 2–124) (June 27, 1978).	July 10, 1978	Oct. 19, 1978
2–244	Emergency, Air Quality Control Regulations Amendment Act of 1978 (EA 2–151) (Aug. 1, 1978).	Aug. 1, 1978	Oct. 30, 1978
2–245	1st emergency, District of Columbia Police, Firefighters', and Teachers' Salary Act Amendment of Fiscal Year 1979 (EA 2–132) (Aug. 1, 1978).	____do____	Do.
2–246	1st emergency, Housing Discontinuance Regulation Act of 1978 (EA 2–133) (Aug. 1, 1978).	____do____	Do.
2–253	Election of Delegates, Emergency Act of 1978 (EA 2–134) (Aug. 2, 1978)	Aug. 2, 1978	Oct. 31, 1978
2–255	District of Columbia Surplus Property, Emergency Authority Act of 1978 (EA 2–145) (Aug. 8, 1978).	Aug. 8, 1978	Nov. 6, 1978
2–256	Real Property Tax Rate, Emergency Act for the Tax Year 1979 (EA 2–138) (Aug. 10, 1978).	Aug. 10, 1978	Nov. 8, 1978
2–257	Emergency, Property Tax Referral Reform Act of 1978 (EA 2–140) Aug. 10, 1978).	____do____	Do.

See footnotes at end of table.

EMERGENCY ACTS ADOPTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA (1975–80)

COUNCIL PERIOD 2 (1977-78)—Continued

Emergency Acts	Title and date enacted	Effective date	Expiration date[1]
2-258	People's Counsel Authorization, Emergency Act of 1978 (EA 2-141) Aug. 14, 1978).	Aug. 14, 1978	Nov. 12, 1978
2-264	Rental Vehicle Tax Reform, Emergency Act of 1978 (EA 2-137) (Aug. 16, 1978).	Aug. 16, 1978	Nov. 14, 1978
2-265	District of Columbia Renters and Homeowners Tax Reduction, Emergency Act of 1978 (EA 2-139) (Aug. 30, 1978).	Aug. 30, 1978	Nov. 28, 1978
2-266	1st emergency, District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (EA 2-142) (Aug. 30, 1978).	do	Do.
2-271	District of Columbia Emergency, Educational Institution Licensure Regulations Act of 1978.	Aug. 21, 1978	Nov. 19, 1978
2-272	3d Condominium Conversion, Emergency Act of 1978 (EA 2-136) (Aug. 21, 1978).	do	Do.
2-273	Emergency Offer to Purchase Act of 1978 (EA 2-144) (Sept. 1, 1978)	Sept. 1, 1978	Nov. 28, 1978
2-274	2nd emergency Interest Rate Extension Act of 1978 (EA 2-148) (Oct. 4, 1978).	Oct. 4, 1978	Jan. 2, 1979
2-275	2nd emergency, Interest Rate Increase Act of 1978 (EA 2-151) (Oct. 6, 1978).	Oct. 5, 978	Jan. 3, 1979
2-276	Closing of a Public Alley in Square 2855, 1st Emergency Act of 1978 (EA 2-145) (Oct. 5, 1978).	do	Do.
2-277	Emergency, Multi-Family Rental Housing Purchase Act of 1978 (EA 2-149) (Oct. 3, 1978).	Oct. 3, 1978	
2-281	The 2d District of Columbia Business Corporation Act, Emergency Amendments of 1978 (EA 2-146) (Oct. 10, 1978).	Oct. 16, 1978	
2-282	The 2d Standard Valuation and Nonforfeiture Amendments, Emergency Act of 1978 (EA 2-147) (Oct. 25, 1978).	Oct. 5, 1978	
2-284	2d District of Columbia Surplus Property, Emergency Authority Act of 1978 (EA 2-152) (Oct. 25, 1978).	Oct. 25, 1978	Jan. 23, 1979
2-285	4th School Transit Subsidy, Emergency Authority Act of 1978 (EA 2-153)	do	Do.
2-286	Closing of a Public Alley in Square 163, 3d Emergency Act of 1978 (EA 2-154) (Oct. 25, 1978).	do	Do.
2-287	Closing of a Public Alley in Square 100, 3d Emergency Act of 1978 (EA 2-155) (Oct. 25, 1978).	do	Do.
2-288	Tax Return Confidentiality, Emergency Act of 1978 (EA 2-156) (Oct. 25, 1978)	do	Do.
2-289	2d emergency, Housing Discontinuance Act of 1978 (EA 2-158) (Oct. 25, 1978)	do	Do.
2-290	4th emergency, Cooperative Regulation Act of 1978 (EA 2-158) (Oct. 25, 1978)	do	Jan. 23, 1979
2-293	Tax Amendments, Emergency Act of 1978 (EA 2-159) (Nov. 1, 1978)	Nov. 1, 1978	Jan. 29, 1979
2-294	2d emergency, District of Columbia Police, Firefighters, and Teachers' Salary Act Amendment of Fiscal Year 1979 (EA 2-161) (Nov. 7, 1978).	Nov. 7,1978	Feb. 5, 1979
2-295	District of Columbia 2d emergency, Educational Institution Licensure Regulations Extension Act of 1978 (EA 2-162) (Nov. 7, 1978).	do	Do.
2-296	2d emergency, Air Quality Control Regulations Amendment Act of 1978 (EA 2-163) (Nov. 7, 1978).	do	Do.
2-298	2d Real Property Tax Rate, Emergency Act for Tax Year 1978 (EA 2-164) (Nov. 9, 1978).	Nov. 9, 1978	Feb. 7, 1979
2-302	Senior Citizens Residence Sales Tax on Meals (EA 2-165) (Nov. 27, 1978)	Nov. 27, 1978	Feb. 23, 1979
2-303	2d emergency, District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (EA 2-167) (Nov. 27, 1978).	do	Do.
2-304	People's Council Authorizations, 2d Emergency Act of 1978 (EA 2-168) (Nov. 27, 1978).	do	Do.
2-305	District of Columbia Renters and Homeowners Tax. Reduction, Emergency Act of 1978 (EA 2-169) (Nov. 27, 1978).	do	Do.
2-306	Rental Vehicle Tax Reform Emergency Act of 1978 (EA 2-170) (Nov. 27. 1978)	do	Do.
2-307	Mayoral Transition, Emergency Act of 1978 (EA 2-076) (Nov. 27, 1978)	Dec. 4, 1978	
2-308	Emergency, Federal Payment Request for fiscal year 1980 Act (EA 2-166) (Nov. 27, 1978).	Nov. 29, 1978	
2-309	4th Condominium Conversion, Emergency Act of 1978 (EA 2-172) (Nov. 27, 1978).	Nov. 30, 1978	
2-314	Emergency, Multi-Family Rental Housing Purchase Act of 1979 (EA 2-171) (Dec. 14, 1978).	Dec. 14, 1978	Mar. 15, 1979
2-315	2d emergency, Offer to Purchase Act of 1978 (EA 2-173) (Dec. 15, 1978)	Dec. 15, 1979	
2-316	3d emergency, Interest Rate Increase Act of 1978 (EA 2-174) (Dec. 15, 1978)	do	
2-317	3d emergency, Interest Rate Extension Act of 1978 (EA 2-175) (Dec. 15, 1978)	do	
2-329	Moratorium on Retail Service Station Conversions, Emergency Act of 1978 (EA 2-177) (Dec. 28, 1987).	Dec. 29, 1978	
2-330	Emergency, Authorization for Issuance of Commemorative Vehicle Identification Tags for Officials of the District of Columbia Government Act of 1978 (EA 2-178) (Dec. 29, 1978).	Dec. 27, 1978	
2-331	5th School Transit Subsidy, Emergency Act of 1978 (EA 2-179) (Dec. 29, 1978).	Dec 29, 1978	
2-332	Tax Return Confidentiality, 2nd Emergency Act of 1978 (EA 2-180) (Dec. 29, 1978).	do	
2-333	Closing of a Public Alley in Square 2855, 2nd Emergency Act of 1978 (EA 2-181) (Dec. 12, 1978).	do	
2-334	Closing of a Public Alley in Square 100, 4th Emergency Act of 1978 (EA 2-182) (Dec. 28, 1978).	do	
2-335	Closing of a Public Alley in Square 163, 4th Emergency Act of 1978 (EA 2-183) (Dec. 29, 1978).	do	
2-336	Closing of a Public Alley in Square 77, 1st Emergency Act of 1978 (EA 2-184) (Dec. 29, 1978).	do	
2-337	District of Columbia Consumer Lay Away Plan Service Charge, Emergency Act of 1978 (EA 2-185) (Dec. 29, 1978).	do	

See footnotes at end of table.

EMERGENCY ACTS ADOPTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA (1975–80)

COUNCIL PERIOD 3 (1979–80)

Emergency acts	Title and date enacted	Effective date	Expiration date [1]
3–1	3rd District of Columbia Surplus Property, Emergency Authority Act of 1978 (Jan. 16, 1979).	Jan. 23, 1979	Apr. 23, 1979
3–2	1st emergency, Cooperative Regulation Act of 1979 (Jan. 16, 1979)	do	Do.
3–3	Air Quality Control Regulations Amendment, Emergency Act of 1979 (1st emergency) (Jan. 16, 1979).	Feb. 4, 1979	May 5, 1979
3–4	3rd emergency, District of Columbia Police, Firefighters, and Teachers Salary Act Amendment of Fiscal Year 1979 (Jan. 30, 1979).	Feb. 15, 1979	May 16, 1979
3–5	Emergency, Board of Education Vacancy Election Act of 1979 (Feb. 13, 1979)	Feb. 16, 1979	Feb. 17, 1979
3–6	3rd Real Property Tax Rate, Emergency Act, for Tax Year 1979 (Jan. 30, 1979)	do	Do.
3–7	District of Columbia emergency, Educational Institution Licensure Regulations Act of 1979 (Jan. 30, 1979).	Feb. 5, 1979	May 6, 1979
3–8	1st emergency, District of Columbia Unemployment Act Compulsory Amendment of 1979 (Jan. 30, 1979).	Feb. 21, 1979	May 22, 1979
3–9	Senior Citizens Residences Sales Tax on Meals Exemption, Emergency Act of 1979 (Feb. 16, 1979).	Feb. 23, 1979	May 24, 1979
3–10	1st Condominium Conversion, Emergency Act of 1979 (Feb. 16, 1979)	do	Do.
3–11	1st Rental Vehicle Tax Reform, Emergency Act of 1979 (Feb. 16, 1979)	Feb. 26, 1979	May 27, 1979
3–12	3rd District of Columbia Rentors and Homeowners Tax Reduction, Emergency Act (Feb. 16, 1979).	do	Do.
3–13	People's Counsel Authorization, Emergency Act of 1979 (Feb. 13, 1979)	do	Do.
3–14	District of Columbia Government Comprehensive Merit Personnel Act Emergency Amendments of 1979 (Feb. 27, 1979).	Mar. 1, 1979	May 30, 1979
3–15	2d Emergency, Multi-Family Rental Housing Purchase Act of 1979	Mar. 14, 1979	June 12, 1979
3–16	1st Emergency, Offer to Purchase Act of 1979 (Mar. 13, 1979)	do	Do.
3–17	District of Columbia Consumer Lay Away Plan Service Charge, Emergency Act of 1979 (Mar. 13, 1979).	Mar. 27, 1979	June 26, 1979
3–19	Moratorium on Retail Service Stations Conversions, Emergency Act of 1979 (Mar. 27, 1979).	Apr. 13, 1979	July 12, 1979
3–20	Closing of a Public Alley in Square 77, Emergency Act of 1979 (Mar. 27, 1979)	Mar. 29, 1979	June 27, 1979
3–21	Closing of a Public Alley in Square 2855, Emergency Act of 1979 (Mar. 27, 1979)	do	Do.
3–22	Closing of a Public Alley in Square 2141, Emergency Act of 1979 (Apr. 10, 1979)	Apr. 13, 1979	July 12, 1979
3–30	2d District of Columbia Surplus Property, Emergency, Authority Act of 1979 (Apr. 10, 1979).	Apr. 25, 1979	July 24, 1979
3–36	Realty Violations Corrections Fund, Emergency Act (Apr. 10, 1979)	May 4, 1979	Aug. 2, 1979
3–37	2d emergency, Cooperative Regulations Act of 1979 (Apr. 10, 1979)	Apr. 25, 1979	July 24, 1979
3–38	Emergency, Home Purchase Assistance Fund Expansion Act (Apr. 10, 1979)	May 7, 1979	Aug. 5, 1979
3–39	Development Assistance Seed Money Loan Fund, Emergency Act (Apr. 10, 1979).	do	Do.
3–40	Emergency, Amendments to the District of Columbia Consumer Transmission of Money Act (Apr. 10, 1979).	May 8, 1979	Aug. 6, 1979
3–42	Youth Employment, Emergency Act (Apr. 10, 1979)	May 22, 1979	Aug. 20, 1979
3–43	Emergency, Distirct of Columbia Income and Franchise Tax Statute of Limitations Extension Act of 1979 (Apr. 10, 1979).	Apr. 16, 1979	July 15, 1979
3–44	Emergency, Condominium and Cooperative Stabilization Act of 1979 (May 22, 1979).	May 29, 1979	Aug. 27, 1979
3–45	District of Columbia Government Comprehensive Merit Personnel Act, 2d Emergency Amendment of 1979 (May 8, 1979).	May 30, 1979	Aug. 28, 1979
3–46	District of Columbia 2d emergency, Educational Institutional Licensure Regulations Act of 1979 (May 8, 1979).	May 17, 1979	Aug. 15, 1979
3–47	Emergency, Condominium/Cooperative Conversion Rent Level Amendment Act of 1979 (May 8, 1979).	May 29, 1979	Aug. 27, 1979
3–48	Emergency, Regulation Enforcement Act (May 8, 979)	May 30, 1979	Aug. 28, 1979
3–49	2d People's Council Authorization, Emergency Act of 1979 (May 8, 1979)	do	Do.
3–52	Full Political Participation Act, Emergency Amendments of 1979 (May 22, 1979).	June 8, 1979	Sept. 6, 1979
3–53	3d emergency, Multi-Family Rental Housing Purchase Act of 1979 (May 22, 1979).	June 11, 1979	Sept. 9, 1979
3–54	2d emergency, Offer to Purchase Act of 1979 (May 22, 1979)	June 12, 1979	Sept. 10, 1979
3–56	Real Property Tax Classifications, Emergency Act for Tax Year 1980 (May 22, 1979) Amended (June 5, 1979).	June 29, 1979	Sept. 27, 1979
3–58	Interest Rate Modification, Emergency Act of 1979 (July 3, 1979)	July 10, 1979	Oct. 8, 1979
3–60	District of Columbia Service Charge Consumer Lay Away Plan, Emergency Act (June 19, 1979).	July 12, 1979	Oct. 10, 1979
3–61	3d District of Columbia Surplus Property Authority Act of 1979 (July 3, 1979)	July 24, 1979	Oct. 22, 1979
3–69	Harbor and Boating Safety, Emergency Act of 1979 (June 19, 1979)	do	Do.
3–71	2d Moratorium on Retail Service Station Conversions, Emergency Act of 1979 (July 3, 1979).	Aug. 1, 1979	Oct. 30, 1979
3–72	2d emergency, District of Columbia Income and Franchise Tax Statute of Limitations Extension Act of 1979 (July 3, 1979).	do	Do.
3–73	Confidentiality and Disclosure of Records on Abused and Neglected Children, Emergency Act (July 31, 1979).	do	Do.
3–74	Real Property Tax Rates for Tax Year 1980, Emergency Act of 1979 (July 31, 1979).	Aug. 2, 1979	Oct. 31, 1979
3–79	3d emergency Cooperative Regulation Act of 1979 (July 17, 1979)	Aug. 3, 1979	Nov. 1, 1979
3–82	Closing of a Public Alley in Square 214, 2d Emergency Act of 1979 (July 3, 1979).	Aug. 9, 1979	Nov. 7, 1979
3–84	2d Youth Employment, Emergency Act of 1979 (July 17, 1979)	Aug. 21, 1979	Nov. 19, 1979
3–85	2d Emergency, Home Purchase Assistance Fund Expansion Act of 1979 (July 17, 1979).	Aug. 3, 1979	Nov. 1, 1979

See footnotes at end of table.

EMERGENCY ACTS ADOPTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA (1975–80)

COUNCIL PERIOD 3 (1979–80)—Continued

Emergency acts	Title and date enacted	Effective date	Expiration date [1]
3–86	2d Development Assistance and Money Loan Fund, Emergency Act of 1979 (July 17, 1979).	Aug. 6, 1979	Nov. 4, 1979
3–87	2d Realty Violations Corrections Fund, Emergency Act of 1979 (July 17, 1979)	do	Do.
3–88	2d emergency, Regulation Enforcement Act of 1979 (July 17, 1979)	Aug. 14, 1979	Nov. 12, 1979
3–89	District of Columbia Government Comprehensive Merit Personnel Act, 3d Emergency Amendments of 1979 (July 31, 1979).	Aug. 16, 1979	Nov. 14, 1979
3–90	4th Emergency, Multi-Family Rental Housing Purchase Act of 1979 (July 31, 1979)	Aug. 27, 1979	Nov. 25, 1979
3–91	District of Columbia 3d Emergency, Educational Institutional Licensure Regulations Act of 1979 (July 31, 1979).	Aug. 15, 1979	Nov. 13, 1979
3–92	Full Political Participation Act, 2d Emergency Amendments of 1979 (July 31, 1979).	Sept. 6, 1979	Dec. 5, 1979
3–93	People's Counsel Authorization, 3d Emergency Act of 1979 (July 31, 1979)	Aug. 27, 1979	Nov. 25, 1979
3–94	2d emergency, Amendments to the District of Columbia Consumer Transmission of Money Act of 1979 (July 31, 1979).	do	Do.
3–95	Emergency, Condominum and Cooperative Conversion Stabiization Act of 1979 (July 31, 1979).	Aug. 27, 1979	Nov. 25, 1979
3–96	The Latest Conforming, Emergency, Offer to Purchase Act of 1978 (July 31, 1979).	do	Do.
3–97	Closing of Streets and Alleys for the Washington Civic Center, Emergency Act of 1979 (July 31, 1979).	Aug. 31, 1979	Nov. 29, 1979
3–98	Emergency, Amendment to the Community Residence Facilities Licensure Act (July 31, 1979).	do	Do.
3–103	Real Property Tax Classification, 2d Emergency Act for Tax Year 1980	Sept. 28, 1979	Dec. 27, 1979
3–105	2d Interest Rate Modification, Emergency Act of 1979 (Sept. 25, 1979)	Oct. 5, 1979	Jan. 3, 1980
3–106	District of Columbia Consumer Lay Away Plan Service Charge, 3d Emergency Act of 1979 (Sept. 25, 1979).	Oct. 12, 1979	Jan. 10, 1980
3–108	Property Tax Relief Application Deadline Extension, Emergency Act of 1979 (Sept. 25, 1979).	Oct. 15, 1979	Jan. 13, 1980
3–109	Full Political Participation Act, 3d Emergency Amendments of 1979 (Oct. 9, 1979).	do	Do.
3–110	Prohibition of Electric and Gas Utility Services Termination to Master Metered Apartment Buildings, Emergency Act of 1979 (Sept. 25, 1979).	Oct. 18, 1979	Jan. 16, 1980
3–111	Real Property Tax Rates for Tax Year 1980, 2d Emergency Act of 1979 (Oct. 9, 1979).	Oct. 26, 1979	Jan. 24, 1980
3–115	Emergency, Heating Oil Cost Rent Adjustment Act of 1979 (Oct. 9, 1979)	Nov. 2, 1979	Jan. 31, 1980
3–116	3d Moratorium on Retail Service Station Conversions, Emergency Act of 1979 (Oct. 9, 1979).	do	Do.
3–121	Realty Violations Correction Fund, 3d Emergency Act of 1979 (Oct. 23, 1979)	Nov. 9, 1979	Feb. 7, 1980
3–122	3d, Youth Employment Emergency Act of 1979 (Oct. 23, 1979)	do	Do.
3–127	Closing of a Public Alley in Square 214, 3d Emergency Act of 1979 (Oct. 23, 1979).	Nov. 20, 1979	Feb. 18, 1980
3–128	Closing of Streets and Alleys for the Washington Civic Center, 2d Emergency Act of 1979.	do	Do.
3–129	3d emergency, Amendment of the District of Columbia Transmission of Money Act of 1978.	do	Do.
3–130	District of Columbia, 4th emergency, Educational Institution Licensure Registration Act of 1979.	do	Do.
3–131	District of Columbia Government Comprehensive Merit Personnel Act Disability Compensation, 2d Emergency Amendment of 1979.	do	Do.
3–132	Condominium and Cooperative Conversion Satbilization, Emergency Act of 1979.	Nov. 23, 1979	Feb. 21, 1980
3–133	3d Emergency, Regulation Enforcement Act of 1979	Dec. 3, 1979	Mar. 2, 1980
3–137	Public Officials Disclosure, Emergency Amendments of 1979 (Dec. 12, 1979)	Dec. 15, 1979	Mar. 14, 1980
3–139	District of Columbia Government Comprehensive Merit Personnel Emergency Act of 1979.	Dec. 21, 1979	Mar. 20, 1980
3–140	Emergency, Medical Technician/Paramedic Examination Deadline Extension Emergency Act of 1979 (Dec. 12, 1979).	do	Do.
3–141	Property Tax Relief Application Deadline Extension, 2d Emergency Act of 1979 (Dec. 4, 1979).	do	Do.
	Real Property Tax Classifications, 3d Emergency Act for Tax Year 1980 (Dec. 4, 1979).		
3–148	Master Metered Apartment Building Electric and Gas Service, Emergency Act of 1980.	Jan. 18, 1980	Apr. 17, 1980
3–149	Emergency, Heating Oil Cost Rent Adjustment Act of 1980 (Jan. 28, 1980)	Jan. 31, 1980	Apr. 30, 1980
3–150	Closing of Public Streets and Alleys in Squares N–1313, S–1312 and 1313 and Abandonment of Highway Plan Streets within Squares N–1312, 1313, and 1320, Emergency Act of 1980 (Jan. 22, 1980).	Feb. 13, 1980	May 13, 1980
3–151	Condominium and Cooperative Conversion Stabilization, Emergency Act of 1980 (Feb. 5, 1980).	Feb. 20, 1980	May 20, 1980
3–152	District of Columbia Educational Institutional Licensure Regulations, Emergency Adoption Act of 1980 (Feb. 5, 1980).	Feb. 21, 1980	May 21, 1980
3–153	District of Columbia Comprehensive Merit Personnel Act Disability Compensation and Personnel Management, Emergency Amendment of 1980 (Feb. 19, 1980).	do	Do.
3–158	Closing of Streets and Alleys for the Washington Convention Center, Emergency Act of 1980 (Feb. 5, 1980).	Mar. 3, 1980	June 1, 1980
3–159	Closing of a Public Alley in Square 214, Emergency Act of 1980 (Feb. 5, 1890)	do	Do.

See footnotes at end of table.

EMERGENCY ACTS ADOPTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA (1975–80)

COUNCIL PERIOD 3 (1979–80)—Continued

Emergency acts	Title and date enacted	Effective date	Expiration date [1]
3–165	Public Officials Disclosure, Emergency Amendments of 1980 (Mar. 4, 1980)	Mar. 14, 1980	June 12, 1980
3–167	District of Columbia Government Comprehensive Merit Personnel Act, Emergency Act of 1980 (Mar. 18, 1980).	Mar. 20, 1980	June 18, 1980
3–168	Property Tax Relief Application Deadline Extension, 1st Emergency Act of 1980 (Mar. 4, 1980).	Mar. 27, 1980	June 25, 1980
3–169	Minority Business Opportunity Commission Continuation, Emergency Act of 1980 (Mar. 18, 1980).	Mar. 17, 1980	June 25, 1980
3–171	Emergency, Unemployment Compensation Act Amendment of 1980 (Mar 18, 1980).	Mar. 31, 1980	June 29, 1980
3–175	Motor Vehicle Finance Charge Modification, 1st Emergency Act of 1980 (Apr. 1, 1980).	Apr. 25, 1980	July 24, 1980
3–177	Master Metered Apartment House Electric and Gas Service, 2d Emergency Act of 1980 (Apr. 1, 1980).	Apr. 29, 1980	July 28, 1980
3–178	Emergency, District of Columbia Documents Act Amendment of 1980 (July 22, 1980).	May 1, 1980	June 29, 1980
3–180	Increase in the Deposit Fee for Ballot Recounts, Emergency Act of 1980	May 7, 1980	Aug.6, 1980
3–185	Interstate Highway System Withdrawal Emergency Act of 1980	May 14, 1980	Aug. 13, 1980
3–186	Closing of a Portion of Whitehaven Pkwy., T, S, and R Sts. NW., and the Public Alleys In Squares N–1312, S–1312, and S–1313; and Abandonment of Highway Plan within Squares N–1312, 1313 and 1320, 2d Emergency Act of 1980.	do	Do.
3–192	District of Columbia Educational Institution Licensure Regulations, 2d Emergency Adoption Act of 1980.	May 23, 1980	Aug. 22, 1980
3–193	District of Columbia Government Comprehensive Merit Personnel Act Disability Compensation and Personnel Management, 2d Emergency Amendments of 1980.	do	Do.
3–194	Emergency, Rental Housing Conversion Regulation Act of 1980	June 4, 1980	Sept. 2, 1980
3–197	Closing and Dedication of Public Alleys in Square 449, Emergency Act of 1980	June 12, 1980	Sept. 10, 1980
3–198	Solid Waste Regulations, Emergency Amendment of 1980	June 20, 1980	Sept. 18, 1980
3–199	District of Columbia Government Comprehensive Merit Personnel Act, 2d Emergency Act of 1980.	do	Do.
3–209	Closing of a Portion of Public Alley in Square 73, Emergency Act of 1980	July 2, 1980	Sept. 30, 1980
3–210	Minority Contracting Act, Emergency Amendment of 1980	July 9, 1980	Oct. 7, 1980
3–211	District of Columbia Revenue, Emergency Act of 1980	do	Do.
3–212	Unemployment Compensation Act, Emergency Amendments of 1980	do	Do.
3–226	Master Metered Apartment House Electric and Gas Service	July 22, 1980	Oct. 20, 1980
3–227	Motor Vehicle Finance Charge Amendment, Emergency Act of 1980	do	Do.
3–228	Closing of a Portion of Public Alley in Square 221, Emergency Act of 1980	do	Do.
3–238	Closing of a Public Alley in Square 563 Emergency Act of 1980 (EA 3–137) (Res. 3–527).	Aug. 1, 1980	Oct. 30, 1980
3–239	District of Columbia Government 1980 Emergency Amendments to Public School Teachers Retirement (EA 3–138) (Bill 3–273) (Res. 3–529).	Sept. 1, 1980	Nov. 30, 1980
3–240	Police Officers and Fire Fighters Retirement Emergency Amendment of 1980 (EA 3–139) (Res. 3–528) (Bill 3–273).	do	Do.
3–241	Increase in Deposit Fee for Ballot Recounts, Congressional Recess Act (EA 3–140) (Res. 3–492) (Bill 3–300) (Act 3–215).	Aug. 7, 1980	Nov. 5, 1980
3–242	District of Columbia Educational Institutions Licensure Regulations Congressional Recess Emergency Act (EA 3–141) (Res. 3–493).	Aug. 23, 1980	Nov. 21, 1980
3–243	Real Property Tax Rate for Tax Year 1981 Emergency Act (EA 3–141) (Res. 3–493).	Aug. 1, 1980	Oct. 30, 1980
3–244	District of Columbia Government Comprehensive Merit Personnel Act Disability Act (EA 3–143) (Res. 3–495).	Aug. 23, 1980	Nov. 21, 1980
3–245	Rental Housing Conversion Regulations Congressional Recess Emergency Act (EA 3–144) (Res. 3–496).	Sept. 3, 1980	Oct. 2, 1980
3–246	Closing of a Public Alley in Square 225 Emergency Act of 1980. (EA 3–146) (Res. 3–498) (Bill 3–343).	Aug. 1, 1980	Oct. 30, 1980
3–247	Closing and Dedication of Public Alleys in Square 449 Emergency Act (EA 3–147) (Res. 3–536).	Sept. 11, 1980	Dec. 10, 1980
3–248	Rental Housing Conversion and Sale Emergency Act (EA 3–145) (Res. 3–497)	Aug. 10, 1980	Nov. 9, 1980
3–249	Government Comprehensive Merit Personnel Act Pay Provisions, Amendments of 1980.	Sept. 26, 1980	Dec. 25, 1980
3–250	Water and Sewer Service Rates, amendment of 1980	Oct. 2, 1980	Dec. 31, 1980
3–251	Board of Education and the University of the District of Columbia Compensation System Establishment, Act of 1980.	do	Do.
3–252	Day Care Policy Act, amendment of 1980	do	Do.
3–253	Public School Safety, Act of 1980	do	Do.
3–253	Public School Safety	do	Do.
3–268	Closing of a Public Alley in Square 563	Oct. 29, 1980	Jan. 27, 1981
3–269	Closing of a Public Alley in Square 225	do	Do.
3–270	Real Property Tax Rates for Tax Year	Oct. 29, 1980 1981	Do.
3–271	Election Act, Amendments	Oct. 29, 1980	Do.
3–278	Alcoholic Beverage Control Act, Amendments	Oct. 30, 1980	Jan. 29, 1981
3–279	Closing of a Portion of a Public Alley in Square N–699	Nov. 10, 1980	Feb. 9, 1981
3–288	Closing of Public Alleys in Square 254	Nov. 13, 1980	Feb. 12, 1981
3–295	Consumer Protection Office, Administrative Law Judge	Nov. 25, 1980	Feb. 23, 1981
3–296	Disability Compensation Reorganization	do	Do.

[1] Shown where available.
[2] Vetoed.

Index of Council Emergency Acts adopted in council period (1979–80)

APPENDIX D

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 79-1053

DISTRICT OF COLUMBIA, *et al.*, APPELLANTS,

v.

THE WASHINGTON HOME OWNERSHIP COUNCIL, INC., APPELLEE.

Appeal from the Superior Court of the District of Columbia

(Hon. George H. Revercomb, Trial Judge)

(Argued en banc November 26, 1979
Decided May 28, 1980)

David P. Sutton, Assistant Corporation Counsel, with whom *Judith W. Rogers*, Corporation Counsel, *Richard W. Barton*, Deputy Corporation Counsel, and *James J. Stanford*, Assistant Corporation Counsel, were on the brief, for appellant District of Columbia.

Jerry D. Anker, with whom *Leslie D. Michelson* and *Kerry Alan Scanlon* were on the brief, for appellants Metropolitan Washington Planning and Housing Association, Inc., *et al.*

Stephen M. Sacks, with whom *Thomas E. Silfen* and *Linda G. Moore* were on the brief, for appellee.

[972]

Before NEWMAN, *Chief Judge*, and KELLY,* KERN, GALLAGHER, NEBEKER, HARRIS, MACK, FERREN, and PRYOR, *Associate Judges*.

Opinion for the court by *Associate Judge* FERREN.

Concurring opinion by *Associate Judge* GALLAGHER, with whom *Associate Judges* KERN, NEBEKER, and HARRIS join, at p. 37.

Dissenting opinion by *Associate Judge* MACK, with whom *Chief Judge* NEWMAN and *Associate Judge* PRYOR join, at p. 48.

FERREN, *Associate Judge*: This case presents one question: under the District of Columbia Self-Government and Governmental Reorganization Act (Home Rule Act), D.C. Code 1979 Supp., § 1-146(a), does the District Council have authority to respond to "emergency circumstances" by adopting successive, substantially identical 90-day acts addressed to the same, ongoing emergency, without a second reading or congressional review, as is required for passage of permanent legislation? Alleging that the Council does not have such authority, The Washington Home Ownership Council, Inc. (WHOC)[1] brought a three-count action for declaratory and injunctive relief against the District of Columbia, challenging the validity of three series of emergency acts imposing moratoriums on conversion of rental property to condo-

* Associate Judge KELLY participated at oral argument but not in the decision of this case.

[1] WHOC is a nonprofit corporation having members engaged in ownership, brokerage, development, and management of real estate in the District of Columbia, including rental, condominium, and cooperative housing.

minium and cooperative units, and regulating the sale of converted units. The Metropolitan Washington Planning and Housing Association, Inc. and a group of tenants' organizations intervened as defendants.[2] After a hearing on cross-motions for summary judgment, the trial court ruled for the plaintiff, WHOC.[3] The court

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[2] Metropolitan Washington Planning and Housing Association, Inc., is a nonprofit corporation that represents and assists low and moderate income persons in need of housing in the Washington, D.C. metropolitan area. The other intervenor-defendants are Towne Towers, Aristocrat Tenants Association, Dorchester Tenants Association, Mintwood Tenants Association, Park Regent Tenants Association, Covington Tenants Association, and Arundel Tenants Association.

[3] In reaching this result, the trial court held that counts two and three, challenging emergency acts superseded by permanent legislation, were not moot. On appeal, the District questions that ruling. We note, first, that unquestionably there was a justiciable controversy at the time the trial court ruled, for an emergency act in the series of acts challenged in count one was still in effect, presenting legal issues identical to those raised in counts two and three. A substantially identical successor to that emergency act was in force when this case was argued before the en banc court. *See* Appendix. That successor act, however, has since been superseded by permanent legislation, the Condominium and Cooperative Stabilization Act of 1979, which became D.C. Law 3-53 on February 23, 1980. Nonetheless, even this development does not moot the issue of the Council's power to enact substantially identical successive emergency acts; otherwise, as the trial court noted, the Council's practice would be "capable of repetition, yet evading review." *Southern Pacific Terminal Co. v. ICC,* 219 U.S. 498, 515 (1911). A decision on the merits should be rendered if (1) the challenged action is too short in duration to be fully litigated prior to its cessation or expiration, and (2) we can reasonably expect that the same complaining party will be subject to the same action again. *See Weinstein v. Bradford,* 423 U.S. 147, 149 (1975), citing *Sosna v. Iowa,* 419 U.S. 393 (1975). This case

accordingly enjoined enforcement of the one challenged act then in effect, the Emergency Condominium and Cooperative Conversion Stabilization Act of 1979, E. A. 3-95 (approved August 27, 1979). The District and the intervenors have appealed.[4] We affirm the trial court's judgment.

I.

On occasion we have interpreted the Home Rule Act to determine whether the Council had exceeded its authority. For example, in *McIntosh v. Washington*, D.C. App., 395 A.2d 744 (1978), we upheld the Council's authority to enact the Firearms Control Regulations Act of 1975, whereas in *Bishop v. District of Columbia*, D.C. App., 411 A.2d 997 (1980) (en banc), we invalidated § 605 of the Revenue Act of 1975, and in *Capitol Hill Restoration Society, Inc. v. Moore*, D.C.App., 410 A.2d 184 (1979), we nullified the Council's effort to confer jurisdiction upon this court for direct review of determinations under the Historic Sites Subdivision Amendment of 1976.

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demonstrates the difficulty of obtaining review of the validity of a series of successive emergency acts before they are superseded by permanent legislation, even with the utmost effort by the parties and courts to expedite the proceedings. We also have every expectation that the members of WHOC, which have continuing involvement with real estate development in the District, would be subject again to the Council's successive enactment of substantially identical emergency acts if we were to allow that practice to continue. Accordingly, we reach the merits.

[4] On October 22, 1979, a division of this court granted a temporary stay of the trial court's order. On November 9, 1979, the full court, because of the "exceptional importance" of the issue presented, ordered that the case be heard initially by the court sitting en banc. D.C.App. R. 40(c).

In exercising our review function, we have acknowledged that "the core and primary purpose of the Home Rule Act . . . was to relieve Congress of the burden of legislating upon essentially local matters 'to the greatest extent possible, consistent with the constitutional mandate.' D.C. Code 1978 Supp., § 1-121(a)." *McIntosh, supra* at 753 (footnote omitted). We also have stressed, however, that the Act only "delegates to the Council legislative power over 'all *rightful* subjects of legislation within the District.'" *Id.* at 750 n.11 (quoting D.C. Code 1978, § 1-124) (emphasis added). Thus, we have perceived that our role—indeed our duty—is to interpret the Act without undue deference to either legislative body, but always with a central focus: the intent of Congress.[5]

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[5] Our dissenting colleagues argue from two premises: first, the presumptive validity of the Council's actions and, second, the principle of judicial restraint in reviewing the authority of the Council to act in a particular manner. More specifically, they say:

> [1] There is a fundamental canon of statutory construction which mandates that if a statute is fairly susceptible of two constructions, one which will give it effect, the other which would defeat it, the former is preferred. Coupled with this canon is the strong presumption in favor of the validity of actions by the legislature (in this case the District Council).
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> * * *
>
> [2] Courts should adhere to the principles of judicial restraint when called upon to review the validity of the authority under which a coordinate branch of government acts. Any restriction on broad authority should be read narrowly and no limitations not expressly imposed by Congress should be inferred. The interpretation of its powers by any branch is to be given great respect. [*Post* at 49, 58 (citations omitted).]

[Continued]

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II.

Under the Home Rule Act, the District of Columbia Council is empowered to pass legislation by a majority vote after two readings, at least 13 days apart. D.C. Code 1979 Supp. § 1-146(a).[6] If the Mayor does not veto the

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[5] [Continued]

We cannot agree that these premises help the analysis. As to the first, given the fact that we are dealing with two legislatures, Congress and the District Council, it begs the question to say that the Council's own interpretation of the Home Rule Act should be presumed valid. The Council itself is the result, not the initiator, of the Home Rule Act. The Council's interpretation of its own authority obviously commands great respect, but neither the Council's interpretation nor any opposed to it, is entitled to weight beyond the inherent persuasiveness of the position taken in a particular instance.

As to the second premise, our dissenting colleagues do not question this court's authority—and responsibility—to review the Council's actions here. The cases cited in support of judicial restraint, however, rely substantially on the same proposition advanced to support the dissenters' first argument: the presumed validity of a legislative act. Yet, as already indicated, we are confronted by the potentially conflicting positions of *two* legislative bodies—Congress and the Council—and it is this court's duty to determine whether they can be reconciled. We perceive no principled basis for deferring to the Council's interpretation of the Home Rule Act, apart from the merits of the Council's argument. Although "the interpretation of its powers by any branch is due great respect from the others [,] . . . '[i]t is emphatically the province and duty of the judicial department to say what the law is.' " *United States v. Nixon*, 418 U.S. 683, 703 (1974) (quoting *Marbury v. Madison*, 1 Cranch 137, 177 (1803)).

[6] The Home Rule Act, D.C. Code 1979 Supp., § 1-146(a), provides:

> The Council, to discharge the powers and duties imposed herein, shall pass acts and adopt resolutions, upon a vote of a majority of the members of the Council present

act within 10 days (or if the Council overrides a veto by a two-thirds vote), it becomes effective after a 30 legislative-day layover in Congress, unless disapproved by concurrent resolution. D.C. Code 1979 Supp., §§ 1-144(e), -147(c)(1).[7] The second-reading requirement was adopted

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and voting, unless otherwise provided in this Act or by the Council. The Council shall use acts for all legislative purposes. Each proposed act (other than an act to which section 47-224 applies) shall be read twice in substantially the same form, with at least thirteen days intervening between each reading. Upon final adoption by the Council each act shall be made immediately available to the public in a manner which the Council shall determine. If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days. Resolutions shall be used to express simple determinations, decisions, or directions of the Council of a special or temporary character.

[7] D.C. Code 1979 Supp., § 1-147(c)(1) provides:

Except acts of the Council which are submitted to the President in accordance with the Budget and Accounting Act, 1921 (31 U.S.C. 1 et seq.)[,] any act which the Council determines according to section 1-146(a), should take effect immediately because of emergency circumstances, and acts proposing amendments to title IV of this chapter, the Chairman of the Council shall transmit to the Speaker of the House of Representatives, and the President of the Senate a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and repassed by two-thirds of the Council present and voting, each act passed by the Council and allowed to become effective by the Mayor without his signature, and each initiated act and act subject to referendum which has been ratified by a majority of the registered qualified electors voting on the initiative or referendum. *Except as provided in paragraph (2), no such act shall take effect*

to give notice of a pending proposal so that "the public and interested parties can discuss this legislation" before passage. STAFF OF THE HOUSE COMM. ON THE DISTRICT OF COLUMBIA, 93d Cong., 2d Sess., HOME RULE FOR THE DISTRICT OF COLUMBIA 1973-1974 at 1042 (Comm. Print 1974) (hereafter cited as HOME RULE HISTORY) (statement of Rep. Thomas M. Rees).[8] The 30 legislative-day layover was imposed as an orderly way for Congress to carry out its constitutional responsibility to legislate for the District.[9]

> *until the end of the 30-day period (excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act.* The provisions of section 1-127, except subsections (d), (e), and (f) of such section, shall apply with respect to any concurrent resolution disapproving any act pursuant to this paragraph. [Emphasis added.]

D.C. Code 1979 Supp., § 1-147(c)(2) authorizes a one-house veto of Council legislation with respect to Titles 22, 23, and 24, on criminal offenses, criminal procedure, and prisoners and their treatment, respectively.

[8] A second-reading rule is often found in municipal charters; it serves the purpose of permitting the public to participate in the legislative process. *See Town of Burnsville v. City of Bloomington*, 268 Minn. 84, 90, 128 N.W.2d 97, 102 (1964); *Hatfield v. Meers*, 402 S.W.2d 35, 44-45 (Mo. App. 1966).

[9] Congress has expressly reserved a statutory right "to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, . . . including legislation to amend or repeal any law in force in the District." D.C. Code 1978 Supp., § 1-126. This

In contrast, the Council may pass "emergency" legislation by a vote of two-thirds of the members if "emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment." § 1-146(a). However, "such act shall be effective for a period of not to exceed ninety days." *Id.*

The Council considers a situation to be an emergency when immediate legislative action is required for "[t]he preservation of the public peace, health, safety and general welfare." Emergency Condominium and Cooperative Control Resolution of 1979, Res. 3-126, 25 D.C. Reg. 10370, 10372 (June 1, 1979); *accord, Lifschitz v. City of Miami Beach*, 339 So.2d 232, 234 (Fla.App. 1976), *cert. denied*, 348 So.2d 949 (Fla. 1977); *Padberg v. Roos*, 404 S.W.2d 161, 168 (Mo. 1966) (en banc).

Faced with a serious shortage of rental housing in the District because of widespread conversion of rental housing to condominium and cooperative property, the Council perceived a need "to impose temporary controls on the conversion of rental properties to condominium or cooperative status and thus to stabilize rental housing in the District of Columbia." Res. 3-126, *supra*. Accordingly, to preserve the status quo until permanent legislation could be devised, the Council passed three

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statute follows from the constitutional requirement that Congress retain "the power . . . at any time to revise, alter, or revoke the [legislative] authority granted." *D.C. v. John R. Thompson Co.*, 346 U.S. 100, 109 (1953); *see* U.S. CONST. art. I, § 8, cl. 17 ("The Congress shall have power to exercise exclusive Legislation in all Cases whatsoever, over such District . . . as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States.").

series of emergency acts imposing moratoriums on such conversion and regulating the sale of converted units.[10]

WHOC does not dispute that the Council acted in response to a genuine emergency.[11] Nor does the District contend that different emergencies prompted adoption of the acts within each count of WHOC's complaint; each count admittedly reflects substantially identical, successive measures directed at the same, ongoing emergency.[12] Thus, all parties agree on the statement of the issue.

The dispute stems from the District's position that the only procedural limitation in § 1-146(a) on passage of "an act" in emergency circumstances is a two-thirds vote of the Council, and that the 90-day temporal limitation refers only to the particular emergency act itself, not more broadly to the substantive provisions of the act. According to the District, there is no prohibition against adoption—without a second reading or referral to Congress—of successive, substantially identical acts directed at the same emergency.

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[10] A chronology of this emergency legislation is set forth in the Appendix to this opinion.

[11] We therefore do not reach the question whether the District of Columbia courts may review the validity of the Council's determination that an emergency exists under particular circumstances. State courts are divided on that question of judicial power. *Compare State ex rel. Tyler v. Davis*, 443 S.W.2d 625 (Mo. 1969) (en banc) (court will review and decide whether emergency exists) *with State ex rel. Hoppe v. Meyers*, 58 Wash.2d 320, 363 P.2d 121 (1961) (en banc) (legislative determination of emergency is conclusive unless facially false).

[12] WHOC also does not dispute that an "emergency" may persist for an extended period. *See United States v. Southern Ry. Co.*, 364 F.2d 86, 94 (5th Cir. 1966), *cert. denied*, 386 U.S. 1031 (1967); *Daugherty Lumber Co. v. United States*, 141 F.Supp. 576, 581 (D.Or. 1956) (3-judge court).

The trial court rejected this construction. It held "that the Council may not, through its emergency power, continue in effect substantially the same substantive provisions of law for more than ninety days without a second reading of the act." *Washington Home Ownership Council, Inc. v. District of Columbia*, 107 Wash. D.L. Rptr. 1985, 1993 (Nov. 9, 1979). This interpretation accords more closely with the concept announced in the House of Representatives Committee Report on the proposed Home Rule Act, which stated that "[w]hen the Council acts in an emergency fashion, . . . its *action* shall be effective for not more than ninety days." HOME RULE HISTORY at 1462 (emphasis added). Nonetheless, because the statutory language is not conclusive, we examine the scheme of the Home Rule Act, as illuminated by additional legislative history.

III.

A. According to WHOC, the Council's "emergency" power in § 1-146(a) to dispense with the second-reading and congressional layover requirements is an exception to the basic scheme, not an alternate route to long-term legislation. More specifically, WHOC challenges the District's view that the 90-day limitation on "such act" is applicable, separately, to *each* emergency act as such, without regard to the substance of the legislation. WHOC argues that this view is inconsistent with the exceptional nature of the emergency power because it would permit adoption of consecutive emergency acts to the point where they effectively amount to permanent legislation. WHOC stresses that Congress did not intend this alternative to the second-reading and congressional layover requirements.

In reply, the District concedes that under its reading of the statute, the Council could pass an unbroken succession of emergency acts extending over years—as in

this case—limited only by the requirement that the Council find an "emergency." The District, therefore, argues in effect that Congress intended two alternative legislative tracks; the Council can choose between regular or emergency legislative procedures solely by reference to its own perception of the circumstances.

The District premises its argument not only on its literal reading of the "such act" clause in § 1-146(a), but also on the protections against abuse inherent in the two-thirds voting requirement for emergency measures. According to the District, Congress intended this additional obstacle to Council action as a sufficient offset to the second-reading and congressional layover requirements. The District argues that the two-thirds vote is an adequate safeguard because no substantial protections are lost when the emergency procedure is used. It stresses that the 90-day limitation on emergency acts effectively serves the purpose of the second-reading requirement, since the public will be on notice after the first such act that citizen efforts may be necessary to forestall, modify, or sustain the legislation after 90 days. As to the congressional layover, the District notes that Congress has authority to override the Council's acts—including emergency acts—at any time, without reference to a formal statutory mechanism for doing so. *See* note 9 *supra*. Thus, according to the District, the second-reading and 30 legislative-day layover requirements, while perhaps convenient to alert the public and focus congressional attention, do not inherently add to protection of public rights or congressional prerogatives.

Contrary to the District's argument, we conclude that WHOC's view of the statutory scheme comports more closely with the structure of the Home Rule Act, reflecting the common-sense notion that an "emergency" pre-

rogative and procedure is extraordinary and should not be substituted freely for the regular procedure. Because the District's position is not wholly implausible, however, we turn to the legislative history.

B. Section 146(a) of the Home Rule Act, as finally adopted, incorporated an amendment offered by Representative Thomas M. Rees, who had initiated the "emergency" concept. *See* HOME RULE HISTORY at 1042. Rep. Rees originally proposed that emergency legislation could be enacted "[i]f the Council determines that emergency circumstances make it necessary that an act be adopted at a single reading or that it take effect immediately upon enactment." *Id.* Representative Gilbert Gude then suggested requiring a two-thirds vote of the Council for enactment of such measures. Rep. Rees replied:

> MR. REES. What I think you're suggesting is a good suggestion. . . . I think that you might amend this to say "if the Council determines by a two-thirds vote that emergency circumstances make it necessary that an act be adopted at a single reading or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days." *Usually by a ninety day period, you ascertain whether the act is necessary on a continuing basis and then follow the second and third reading rule and adopt the act which will be a permanent part of the municipal regulations.*
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> MR. WASHINGTON. Can the majority of the Council determine if an emergency exists?
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> MR. REES. *I think in the emergency situation, it would be best to have a two-thirds majority vote. I think there could be some chain hanky-panky.* We think there is an emergency,

> they could say that, and we declare it an emergency. So I would offer an amendment to the amendment. I suggest to the gentleman from Maryland, the last sentence, if the Council by two-thirds vote that emergency circumstances make it necessary that an act be adopted at a single reading or that it take effect immediately upon enactment, and I think this would put the proper safeguard in there. *Then if they want to extend the act past the ninety days, they could obviously follow the second reading rule.* [*Id.* at 1043 (emphasis added).]

Several aspects of this exchange are significant. First, Rep. Rees believed that "usually" 90 days would be a sufficient period for emergency legislation, *i.e.*, for "ascertain[ing] whether the act is necessary on a continuing basis." *Id.* Second, he implicitly acknowledged that emergencies could last beyond 90 days, but in that case, he asserted, the problem should be resolved by tacking permanent legislation onto a single emergency act. In the event the Council "want[s] to extend the act past the ninety days, they could obviously follow the second reading rule." *Id.* Third, Rep. Rees also apparently assumed that any problem could be addressed legislatively without a gap between emergency and permanent legislation, although there is no evidence in the HOME RULE HISTORY that he—or anyone else—knew at the time how realistic that belief actually might turn out to be.[18]

[18] Rep. Rees made these remarks almost three months before Congress, at the behest of Rep. Charles Diggs, added the 30 legislative-day layover provision to the Act. *See* HOME RULE HISTORY, *supra* at 1043, 2084, 2228, 2318-19. The House Committee Report stating that an emergency "action shall be effective for not more than ninety days," HOME RULE HISTORY, *supra* at 1462, also was written prior to addition of the con-

Finally, the reference to possible "chain hanky-panky" reinforces the view that a second, substantially identical emergency act in lieu of a second reading was not to be permitted.

The District argues, to the contrary, that Rep. Rees' acceptance of "a two-thirds majority vote" in the sentence immediately preceding his remarks about "chain hanky-panky" supports its view that Congress contemplated successive emergency acts, subject only to the limitation inherent in the more difficult, two-thirds voting requirement. We do not agree. The two-thirds requirement, suggested initially by Rep. Gude, was directed fundamentally against the Council's precipitous use of emergency power in *any* situation; a two-thirds vote is required even for passage of a single emergency act. Given Rep. Rees' own conclusion that if the Council "want[s] to extend the [emergency] act past the ninety days, they could obviously follow the second reading rule," we do not believe his acceptance of the two-thirds voting requirement was an endorsement of a potentially unlimited number of successive emergency acts. To the contrary, in context, Rep. Rees' reference to "chain hanky-panky" is best interpreted as a general concern about overuse of the emergency power in ways that bypass the second-reading rule.

In summary, based on Rep. Rees' remarks and the House Committee report that an emergency "action shall be effective for not more than ninety days," HOME RULE

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gressional layover requirement—but after Rep. Rees' statements. There is no other legislative history indicating whether addition of the congressional layover affected the views of Rep. Rees or other members of Congress on the feasibility of "tacking" permanent legislation onto a single emergency act and, consequently, on the scope of the Council's authority to adopt successive emergency legislation.

HISTORY, *supra* at 1462, we conclude that the legislative history supports WHOC, not the District.

C. The District argues that whatever the structure of the Home Rule Act or its legislative history otherwise might suggest, a congressional intent to permit successive 90-day acts must be inferred from the addition of the congressional layover requirement—one of the later legislative developments. *See* note 13 *supra*.

The District points out that, in the Council's experience, emergency situations commonly continue well beyond 90 days. It stresses that the most appropriate, permanent legislative solution usually requires time-consuming care in its development and may evolve months after the original 90-day act has expired. Even in the best of circumstances, when the legislative solution is clear, the ordinary legislative machinery, with its elaborate hearing procedure—and a 30 legislative-day congressional layover—simply does not allow for permanent legislation within 90 days of the first emergency act.[14] A gap be-

[14] D.C. Code 1978 Supp., § 1-144(c) provides: "The Council shall adopt and publish rules of procedures which shall include provisions for adequate public notification of intended actions of the Council." The Council, in response, has adopted Rules of Organization and Procedures, Res. 3-53, 25 D.C. Reg. 9343 (April 13, 1979). These are described as follows in the District's motion for summary reversal:

> Rule 709 requires a 15 day period for publication of the proposed enactment (25 DCR 9376). Moreover, if hearings are contemplated, Rule 902 requires an additional notice of 'not less than fifteen (15) days prior to the date of the hearing' (25 DCR 9384). Following hearings and/or citizen input, and deliberation by the appropriate Committee of the Council, a report is prepared and filed with the Council's Secretary. (See Rules 502(a), 506, 25 DCR 9362, 9367-9368.) The Secretary then schedules the proposed bill for review at a 'work session' by the

tween expiration of 90-day legislation and congressionally-approved permanent legislation is virtually inevitable, the District says; and, as in the case of rampant condominium conversion, the failure to bridge that gap legislatively can be disastrous to the public welfare. Given such realities, the District argues that Congress cannot

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Committee of the Whole (COW) which consists of the entire Council. Work sessions of this kind are held every other week, *i.e.*, alternating with legislative sessions (Rule 404, 25 DCR 9354). Following COW review and approval, the proposed measure is scheduled for consideration at ensuing legislative sessions at which it must 'be read twice in substantially the same form with at least thirteen days intervening between each reading' (§ 412(a), *supra*). If passed following the second reading, the act is transmitted to the Mayor, who in turn has 'ten calendar days (excluding Saturdays, Sundays, and holidays) after it is presented to him' to consider it with a view to approval or disapproval (§ 404(e)). If vetoed by the Mayor, the Council is given 30 days to override his veto by a vote of two-thirds of the members present and voting. Id. If the Mayor approves the measure, it is then transmitted to Congress where it must lie for a 30-day review period before taking effect. This layover period is far more lengthy than 30 *calendar* days because it excludes 'Saturdays, Sundays, holidays and any day on which neither House is in session because of an adjournment *sine die*, a recess for more than 3 days, or an adjournment of more than 3 days.' § 602(c), as amended, D.C. Code, § 1-147(c) (Noncum. Supp. VI, 1979). At times, this 30-day period may span many months; for example, if an act transmitted to Congress does not complete the 30-day period before an adjournment *sine die*, the act must begin the 30-day period anew after the reconvening of the next Congress. See 3 Op. C. C. D. C. 524 (1978). These circumstances do not take into consideration such matters as the length of hearings, the time required for careful legislative drafting, and the fact that publication in the D. C. Register of intended actions occurs but once weekly.

have intended to limit the Council to one emergency act in an ongoing emergency situation; Rep. Rees' comments about "chain hanky-panky" and the use of "the second reading rule" become, in effect, obsolete in light of the congressional layover provision proposed later. *See* note 13 *supra*.

This contention is substantially premised on the assumption that the only acceptable "permanent legislation" that can succeed an emergency act is a thoughtfully developed, "permanent" solution to the problem. Obviously, the Council's hearing procedures, careful study in committee, the process of amendment, the Mayor's role, and the congressional layover make it doubtful that, in a situation as complex as the wave of condominium conversions, a definitive solution can be designed and implemented within 90 days. But this argument overlooks a crucial point: as the Council itself has recognized, it can use its regular legislative authority to deal with the problem on an interim basis.[15] There is no reason why the solution adopted in the first emergency act cannot be proposed simultaneously as "permanent" legislation, as Rep. Rees suggested. The "permanent" legislation could be effective for a specified period, *e.g.*, six or nine months, *see* note 15 *supra*, with a reasonable expectation that it could be effective (after a second reading, consideration by the Mayor, and a congressional layover) within 90 days of the first reading.[16]

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[15] The Council used the regular legislative process to pass the Cooperative Conversion Moratorium Act, Act No. 1-71, D.C. Code 1978 Supp., § 29-801, which imposed a 180-day moratorium on cooperative conversions.

[16] If an emergency act were used as a first reading, to be followed by the ordinary legislative sequence as suggested

It is true that in order to adopt permanent legislation within 90 days, the Council first would have to adopt abbreviated hearing procedures for use on those occasions when it declares emergency circumstances, in order to assure that a second reading and passage could occur not long after 13 days from the first reading. *Compare* note 16 *supra with* note 14 *supra.* The need to abbreviate hearing procedures in emergency circumstances, however, does not detract from the reasonableness of this alternative to successive emergency enactments, since there is no statutory requirement that binds

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by Rep. Rees (quoted in the text above), the virtually ideal timetable, requiring 71 days, would be as follows:

Action	Day
Emergency act (first reading)	1
Second reading; submission to Mayor	15 *
Approval by Mayor; submission to Congress	29 **
End of congressional layover without disapproval	71 ***

* Assumes the required 13-day interval and no substantial changes, which would require an additional reading. D.C. Code 1979 Supp., § 1-146(a).

** Assumes 10 days plus two weekends: the full "ten calendar days (excluding Saturdays, Sundays, and holidays) after the act is presented to him." D.C. Code 1979 Supp., § 1-144(e). If the Mayor instead disapproved, the Council would have up to 30 days to override the veto. *Id.*

*** Assumes 30 days plus six weekends and no recesses or adjournments of more than three days; *i.e.*, the full 30 days "excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days, or adjournment of more than 3 days." D.C. Code 1979 Supp., § 1-147(c)(1).

the Council to any particular hearings. *See* D.C. Code 1979 Supp., § 1-144(c).[17]

We agree with the District that this approach puts a premium on pushing temporary solutions through the full legislative process, and that it may detract from the most orderly legislative consideration of a problem by forcing the Council and Mayor to spend time on legislation known to be an incomplete, even flawed response to the problem. But this does not make the approach so unworkable that we can infer Congress must have intended (by virtue of the layover provision or otherwise) to permit consecutive emergency acts. The fact is, the succession of emergency acts at issue in this case imposed solutions over a long period of time that were no more complete than those available through the suggested combination of emergency and regular procedures. The District, therefore, is not in a position to argue that its sustained "emergency" approach to the problem, without a second reading or congressional layover, necessarily brings such a superior legislative response that Congress manifestly intended it as a valid alternative to permanent legislation. *Cf. SEC v. Sloan*, 436 U.S. 103, 115 (1978) (SEC is not empowered to impose successive suspensions

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[17] Contrary to the suggestion of our dissenting colleagues, *see post* at 52 n.5, adoption of abbreviated hearing procedures for use in emergency circumstances would not alter the hearing procedures for adoption of permanent legislation in ordinary circumstances, unaccompanied by declaration of an emergency. Thus, when permanent legislation is not initiated by an emergency enactment, the Council could still proceed under its present regulations. Our point is that the required second reading before extension of an emergency act beyond 90 days puts the public on notice of the longer-term action the Council is about to take, without limiting the Council to particular hearing procedures.

of trading although alternative remedies were "more cumbersome").

We conclude that Congress, fundamentally, required a second reading and congressional layover as necessary safeguards whenever long-term legislation is adopted. The proponents of the amendment authorizing emergency legislation (most notably Rep. Rees) cannot be understood to have compromised the second-reading requirement when they proposed the two-thirds voting requirement for emergency acts; and the later addition of the 30 legislative-day congressional layover cannot be said to have imposed such a burdensome requirement that its very adoption manifests an eventual congressional decision to tolerate an unlimited number of consecutive, substantially identical emergency acts by the Council, as a way of overcoming that burden.

D. The District argues, finally, that despite any adverse implication from the initial legislative history, Congress made clear its intent, favoring the District's interpretation, in adopting the 1978 amendments to the Home Rule Act. These allegedly show that Congress was aware of, and thus implicitly approved, the Council's regular use of consecutive, nearly identical emergency acts.[18]

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[18] The Council's practice was noted in H.R. REP. No. 95-1104, 95th Cong., 2d Sess. at 23 (1978):

> Perhaps the most difficult and burdensome aspect of section 602(c), the congressional review process, is the uncertainty of when an act passed by the Council will become law. . . . At its worst, as in the case of the Condominium Act of 1976 (D.C. Act 1-151), seven months elapsed before the act became law. The unpredictability has forced the District to enact an inordinate amount of temporary (90-day) "emergency legislation" that re-

64-864 O - 81 - 14

We cannot agree. It is true the House committee report acknowledged that "[t]he unpredictability [of the congressional review process] has forced the District to enact an inordinate amount of temporary (90-day) 'emergency legislation'," note 18 *supra*; but the report did not focus on the legality of successive emergency acts and did not express approval of the District's actions. *See Sloan, supra* at 120-21. More importantly, Congress responded to the acknowledged problem of delay in final passage of Council acts by affirmatively rejecting a recommendation that, in the interest of Congress, the layover should be *increased* to 60 days; instead, Congress retained a 30 legislative-day layover and even adjusted the calculation of legislative days in the District's favor. *See* D.C. Code 1979 Supp., § 1-147(c)(1); note 18 *supra*.[19] Congress thereby reaffirmed that the 30 legislative-day period for review is compatible with the Council's needs, including the ability to deal with emergencies. We cannot construe Congress' 1978 acknowledg-

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quires no congressional review and takes effect immediately.

Although the Task Force recommended a review period of 60 calendar days, the committee feels that 30 calendar days, excluding weekends, holidays and recesses or adjournments over three days, will allow sufficient time for Congress to act on a disapproving resolution if one were introduced. This span of time would have accommodated any disapproving resolutions previously introduced.

[19] As indicated in D.C. Code 1979 Supp., § 1-147(c)(1) and the Committee report cited in note 18 *supra*, the 30 legislative-day period now excludes only days in which "neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days." § 1-147(c)(1). Thus, after the 1978 amendments, a three-day recess or adjournment would be counted in the 30-day layover.

ment of the Council's emergency legislation to be, in addition, a reinterpretation of legislative intent or an amendatory endorsement of the Council's practice. *See Haynes v. United States*, 390 U.S. 85, 87 n.4 (1968) ("The views of a subsequent Congress of course provide no controlling basis from which to infer the purposes of an earlier Congress"); *United States v. Price*, 361 U.S. 304, 313 (1960) (earlier congressional intent will not be inferred from a later amendment). The better interpretation of Congress' attitude is a willingness to forbear from joining issue on the problem.

IV.

We have reviewed the language of § 1-146(a), the overall legislative process under the Home Rule Act, the legislative history, and the workability of the "emergency" and "permanent" legislative provisions in conjunction. We agree with WHOC and the trial court.

We conclude, in summary, that Congress intended the Council's emergency power to be an exception to the fundamental legislative process requiring a second reading and congressional layover; it is not an alternative legislative track to be used repeatedly whenever the Council perceives an ongoing emergency. We read the legislative history, especially as elaborated by Rep. Rees, to underscore that the Council must follow the "permanent" legislative route whenever it concludes that emergency circumstances demand legislative protection beyond a 90-day emergency act. The fact that Congress, even when adopting the 1978 amendments to the Home Rule Act, may not fully have appreciated the difficulties it had imposed on the District, does not alter our reading of what Congress has required.

Finally, the District has not shown that a 90-day limit on substantive legislation enacted by way of the

Council's emergency power under § 1-146(a) is incompatible with the need for a responsive legislative process in the District of Columbia. Nothing in the structure of the home rule legislative scheme, as applied to the realities faced by the Council, compels a conclusion that Congress must have contemplated the possibility of consecutive, virtually identical 90-day acts by the District Council in response to the same emergency.[20] We believe the District's arguments are strained in comparison with the interpretation advanced by WHOC and adopted by the trial court.[21]

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[20] As indicated at note 16 *supra*, we premise our analysis of the District's "structural" argument on an assumption that Congress is in session, such that the 30-day layover period can run interrupted only by weekends and holidays. We do not foreclose the argument that a congressional recess after enactment but before the 30-day period has run may create a different emergency permitting a second, consecutive emergency act.

[21] In interpreting the language used in § 1-146(a), in the context of the overall legislative scheme, we take the approach used by the Supreme Court in *Sloan, supra*. There, the Court held that the Securities and Exchange Commission did not have power to order successive suspensions of trading under a statutory provision permitting it "summarily to suspend trading in any security . . . for a period, not exceeding ten days" for the protection of the public. *Id.* at 105 (quoting 15 U.S.C. § 78*l*(k) (1976)). The Court concluded that successive 10-day suspensions unlawfully bypassed notice and hearing procedures in other sections of the statute designed to protect the issuer's rights. Although the contexts are different, *Sloan* is strong authority for the propositions that an overall legislative scheme must be carefully evaluated, and that express provisions against arbitrary action—here the second-reading and congressional layover requirements—should not be subordinated to summary procedures, absent clear congressional intent or compelling indications in the statute.

We therefore hold that when the Council, by a two-thirds vote after a single reading, enacts legislation in response to emergency circumstances, as authorized by D.C. Code 1979 Supp., § 1-146(a), that act "shall be effective for a period of not to exceed ninety days," *id.*, and the Council has no authority to pass another substantially identical emergency act in response to the same emergency.

Consistent with the declaratory relief inherent in our construction of § 1-146(a), we also affirm the trial court's injunction against implementation of the Emergency Condominium and Cooperative Conversion Stabilization Act of 1979, E.A. 3-95.[22] The trial court's declaratory relief, coupled with an immediate injunction, could not have taken the District by surprise because the former Corporation Counsel warned the District Council about the possible illegality of such successive emergency legislation.[23] On the other hand, Congress was aware of the issue while considering the 1978 amendments to the Home Rule Act and was not inclined to take it on directly. Furthermore, the parties have stipulated to the existence of numerous emergency acts which this opinion may affect, and yet we are not in a position, on this appellate record, to evaluate the impact of our decision in these other contexts. Nor, finally, are we in a position

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[22] This Act apparently has expired and has been superseded by permanent legislation. *See* Appendix. We leave it to the parties and the trial court to evaluate the legal effect of this injunction.

[23] *See Comments on EA 1-86: Emergency Cooperative Regulation Act of 1976*, 1 Opinions of the Corporation Counsel 424 (Jan. 11, 1977); *The Emergency Legislation Authority of the Council*, 1 Opinions of the Corporation Counsel 467 (Feb. 16, 1977); *Comments on EA 2-133, the "First Emergency Housing Discontinuance Regulation Act of 1978,"* 3 Opinions of the Corporation Counsel 258 (July 27, 1978).

to evaluate the implications of this opinion for the validity of unchallenged, successive emergency acts which have expired. *Cf. American Bankers Association v. Connell*, No. 78-1337 (D.C.Cir. April 20, 1979), *cert. denied*, 100 S.Ct. 240 (1979) (judgment invalidating bank fund transfer systems recognized as potentially disruptive of private investment and the public interest; judgment stayed for over eight months to permit congressional response).[24]

Recognizing, therefore, that the District requires an appropriate interval in which to deal with its emergency legislation, we shall stay for 90 days the mandate to be issued upon this opinion and order. *See Buckley v. Valeo*, 424 U.S. 1, 142-43 (1976); *Junghans v. Department of Human Resources*, D.C.App., 289 A.2d 17, 26 (1972); *American Bankers Association, supra.*

So ordered.

APPENDIX

The emergency enactments challenged in WHOC's complaint are:*

A. *Count One*

On December 4, 1979, after two readings, the Council passed the Condominium and Cooperative Conversion Stabilization Act No. 3-143, which was signed by the

[24] The circuit court's reasons are set forth in an unpublished judgment. The disposition itself is acknowledged at 595 F.2d 887 (1979).

* The following description of the legislation at issue closely follows the trial court's clear and comprehensive discussion contained in its Opinion and Order of October 19, 1979.

Mayor on December 21, 1979. The act imposes a 180-day moratorium on cooperative and condominium conversions, with specified exemptions to be determined by the Mayor. The act became D.C. Law 3-53 upon expiration of the congressional review period on February 23, 1980.

This permanent legislation was preceded by the following emergency acts:

1. *Emergency Condominium and Cooperative Stabilization Act of 1979*, E.A. 3-44, approved May 29, 1979. [25 D.C.Reg. 10363]

   Accompanied by Resolution 3-126, May 22, 1979, this act imposed a 90-day moratorium on condominium and cooperative conversions, and established the Emergency Condominium and Cooperative Conversion Commission to study the subject and recommend permanent legislation to address problems of low-moderate income tenants who would experience difficulty buying units upon conversion. In setting forth the circumstances deemed to constitute an emergency, the resolution stated:

   > The preservation of the public peace, health, safety and general welfare necessitates an emergency act to impose temporary controls on the conversion of rental properties to condominium or cooperative status and thus to stabilize rental housing in the District of Columbia.

2. *Emergency Condominium and Cooperative Conversion Stabilization Act of 1979*, E.A. 3-95, approved August 27, 1979. [26 D.C. Reg. 1014]

This act was accompanied by Resolution 3-201, July 31, 1979, which is identical to Resolution 3-126, *supra*.

3. *Condominium and Cooperative Conversion Stabilization Emergency Act of 1979*, E.A. 3-132, approved November 23, 1979.** [26 D.C. Reg. 2436]

This act was accompanied by Resolution 3-277, November 20, 1979, stating that permanent legislation has been favorably reported out of committee, but that it could not be made effective until 1980. The provisions are otherwise substantially identical to those contained in Act No. 3-95 and Resolution 3-201, *supra*.

4. *Condominium and Cooperative Stabilization Emergency Act of 1980*, E.A. 3-151, approved February 20, 1980.** [27 D.C. Reg. 849]

This act was accompanied by Resolution 3-335, February 20, 1980, stating that permanent legislation would not become effective until after the expiration of E.A. 3-132. The provisions are otherwise substantially identical to those contained in Act No. 3-95 and Resolution 3-201, *supra*.

** This emergency act was passed since the filing of WHOC's complaint and before oral argument, but it replaced E.A. 3-95 *supra*. Since the two acts are substantially identical, we understand that the controversy between the parties was unaffected by the new enactment.

B. *Count Two*

Following enactment of two emergency moratorium acts,*** the Council, after two readings, enacted and submitted to Congress the Cooperative Conversion Moratorium Act, D.C. Law 1-71, D.C. Code 1978 Supp., § 29-801. It became law on June 19, 1976, at the expiration of the 30-day congressional review period. This law provided for a 180-day moratorium on cooperative conversions, expiring on November 3, 1976. The report of the Council's Committee on Housing and Urban Development which accompanied the bill stated that the 180-day moratorium was needed to allow the Council time to "construct and offer permanent legislation which will serve to govern the establishment and conduct of cooperative housing accomodations in the District."

Following expiration of the 180-day moratorium, the Council passed and the Mayor approved 10 successive emergency acts which continued the moratorium in force:

1. *Emergency Cooperative Regulation Act of 1976*, E.A. 1-189, approved January 3, 1977. [23 D.C.Reg. 4941]

   This act was accompanied by Resolution 1-434, December 7, 1976, finding emergency circumstances in the fact that the congressionally-approved 180-day moratorium would expire before the Council (given its "legislative schedule") could enact "comprehensive legislation," and that "chaos . . . in the housing market"

*** The Emergency Cooperative Conversion Act, E.A. 1-90, approved February 6, 1976, and the Second Emergency Cooperative Conversion Moratorium Act of 1976, E.A. 1-112, approved May 6, 1976.

would result from termination of the moratorium prior to enactment of comprehensive legislation. 23 D.C. Reg. 4275.

2. *Emergency Cooperative Regulation Act of 1977*, E.A. 2-13, approved March 18, 1977. [23 D.C.Reg. 7683]

Accompanied by Resolution 2-38, March 8, 1977, 23 D.C. Reg. 7699, this act follows the language of the first emergency moratorium (E.A. 1-189, *supra*), and is based on the same emergency circumstances.

3. *Second Emergency Cooperative Regulation Act of 1977*, E.A. 2-47, approved June 17, 1977. [24 D.C.Reg. 207]

This Act and accompanying Resolution 2-100, June 14, 1977, 24 D.C.Reg. 111, are the same as their predecessors, except that the act adds provisions for housing and relocation assistance to persons displaced by conversions occurring within the limited exceptions to the moratorium.

4. *Third Emergency Cooperative Regulation Act of 1977*, E.A. 2-88, approved October 12, 1977. [24 D.C.Reg. 3177]

This act and accompanying Resolution 2-165, September 13, 1977, 24 D.C. Reg. 5583, are virtually identical to those immediately preceeding (Act No. 2-47 and Resolution 2-100, *supra*).

On December 6, 1977, the Council enacted the First Emergency Cooperative Conversion Regulation Act of 1978, E.A. 2-70, following adoption of Resolution 2-224. The provisions of that act and resolution were virtually the same as

E.A. 2-88 and Resolution 2-165 *supra*. On January 20, 1978, the Mayor disapproved E.A. 2-70 because of technical deficiencies in the language (and in the language of the similarly-worded permanent legislation then pending on the same subject). In his statement of reasons, the Mayor stated that his action would not adversely affect tenants in the District.

5. *Second Emergency Cooperative Regulation Act of 1978* E.A. 2-171, approved April 3, 1978. [24 D.C.Reg. 9265]

This act was accompanied by Resolution 2-258, February 21, 1978, which notes that the Mayor's disapproval of E.A. 2-70 left a gap in regulation of cooperative conversions, resulting in an emergency because a continued moratorium is needed to prevent chaos. 24 D.C.Reg. 8231. The Act is a revised version of E.A. 2-88, *supra*.

6. *Third Emergency Cooperative Regulation Act of 1978*, E.A. 2-239, approved July 17, 1978. [25 D.C.Reg. 1480]

This act was accompanied by Resolution 2-389, which recites that comprehensive legislation is under consideration in committee and scheduled for public hearings, and that the moratorium must continue to avoid chaos. 25 D.C. Reg. 1786. The Act is identical to Act No. 2-171, *supra*.

7. *Fourth Emergency Cooperative Regulation Act of 1978*, E.A. 2-290, approved October 25, 1978. [25 D.C.Reg. 4332]

This act was accompanied by Resolution 2-447, October 3, 1978. 25 D.C.Reg. 3565. The act

and resolution are virtually identical to E.A. 2-239 and Resolution 2-389, *supra*.

8. *First Emergency Cooperative Regulation Act of 1979*, E.A. 3-2, approved January 25, 1979. [25 D.C.Reg. 7680]

Accompanied by Resolution 3-12, January 16, 1979, 25 D.C. Reg. 7837, this act is identical to its predecessor, E.A. 2-290, except that additional amendments were made to the code provisions governing the Relocation Assistance Office. The resolution is identical to Resolution 2-447, *supra*.

9. *Second Emergency Cooperative Regulation Act of 1979*, E.A. 3-37, approved May 4, 1979. [25 D.C.Reg. 9918]

This act was accompanied by Resolution 3-73, April 10, 1979. 25 D.C.Reg. 9937. The act and the resolution are virtually identical to their immediate predecessors.

10. *Third Emergency Cooperative Regulation Act of 1979*, E.A. 3-79, approved August 3, 1979. [26 D.C.Reg. 642]

This act was accompanied by Resolution 3-170, July 17, 1979, which recites that permanent legislation is before the Mayor and that the moratorium meanwhile must remain in effect to avoid chaos. 26 D.C.Reg. 662. Provisions of this act are virtually identical to E.A. 3-37, *supra*.

On June 5, 1979, the Council adopted permanent legislation in the Cooperative Regulation Act of

1979, which became D.C. Law 3-19 on September 28, 1979, upon expiration of the 30-day congressional review period. 26 D.C.Reg. 1649. This law, containing essentially the same provisions as those included in the preceding emergency act, was adopted by the Council almost three years after enactment of D.C. Law 1-71, the 180-day moratorium which had been intended to gain time for the Council to develop and enact permanent legislation.

C. *Count Three*

On November 29, 1977, the Council passed the Rental Housing Act of 1977, Act No. 2-118, which generally provides a rent-control plan for the District and regulates sales of rental housing. Upon completion of the congressional review period, it became D.C. Law 2-54 on March 16, 1978, D.C. Code 1979 Supp., § 45-1681 *et seq.* The Council has adopted permanent legislation to amend that law, namely (1) the Offer to Purchase Act of 1979, Act No. 3-75, approved August 1, 1979, which became law on October 18, 1979, 26 D.C.Reg. 1823, and (2) the Multi-Family Rental Housing Purchase Act of 1979, Act No. 3-62, which completed congressional review and became D.C. Law 3-18 on September 28, 1979. 26 D.C.Reg. 1648. The Offer to Purchase Act extends the period which owners must give tenants to consider the purchase of rental property and limits the down payment that may be required to 5% of the purchase price. The Multi-Family Rental Housing Purchase Act gives tenants an extended time for organizing to consider an offer of sale by the owner.

During the interim between the enactment of the Rental Housing Act of 1977 and the two permanent amend-

ments in 1979, the substance of these amendments was enacted in the form of 10 emergency measures:

1. *Emergency Offer to Purchase Act of 1978*, E.A. 2-273, approved September 1, 1978. [25 D.C.Reg. 2545]

Accompanied by Resolution 2-425, August 10, 1978, 25 D.C.Reg. 2078, this act amended sections 601 and 602 of the Rental Housing Act of 1977. The resolution describes inadequacies in the 1977 act and states that an emergency exists in that immediate amendment is needed to prevent tenant evictions and to protect purchase rights of tenants.

2. *Emergency Multi-Family Rental Housing Purchase Act of 1978*, E.A. 2-277, approved October 3, 1978. [25 D.C.Reg. 3419]

Accompanied by Resolution 2-434, September 19, 1978, 25 D.C.Reg. 3450, this act addresses an emergency in the fact that tenants are at a disadvantage in attempting to buy their buildings in the absence of an amendment to section 602 (b) of the 1977 act.

3. *Second Emergency Offer to Purchase Act of 1978*, E.A. 2-315, approved December 15, 1978. [25 D.C.Reg. 6120]

This act was accompanied by Resolution 2-471, November 14, 1978, which notes that permanent legislation had been introduced in the Council. 25 D.C.Reg. 5557. This act and resolution are otherwise identical, respectively, to Act No. 2-273 and Resolution 2-425, *supra*.

[1005]

4. *Emergency Multi-Family Rental Housing Purchase Act of 1979*, E.A. 2-314, approved December 14, 1978. [25 D.C.Reg. 6118]

Accompanied by Resolution 2-469, November 15, 1978, 25 D.C.Reg. 5552, this act deletes section 602(b) of the Rental Housing Act of 1977 and substitutes a new section 602(b). The resolution notes that permanent legislation is under consideration in committee, but that a scheduled recess would prevent enactment of permanent legislation before expiration of the previous emergency act (E.A. 2-277). This situation was said to constitute an emergency.

5. *Second Emergency Multi-Family Rental Housing Purchase Act of 1979*, E.A. 3-15, approved March 13, 1979. [25 D.C.Reg. 8787]

This act was accompanied by Resolution 3-39, 25 D.C.Reg. 8790, which states that committee consideration of permanent legislation continues, and that permanent legislation cannot be enacted before expiration of E.A. 2-314, *supra*. This Act is identical to E.A. 2-314, *supra*.

6. *First Emergency Offer to Purchase Act of 1979*, E.A. 3-16, approved March 16, 1979. [25 D.C.Reg. 8793]

This act was accompanied by Resolution 3-42, 25 D.C.Reg. 8796, noting that permanent legislation had been introduced in the Council but would not be enacted prior to expiration of E. A. 2-315, thus creating the need to reenact the provisions of the earlier act.

7. *Third Emergency Multi-Family Rental Housing Purchase Act of 1979*, E.A. 3-53, June 11, 1979. [25 D.C.Reg. 10880]

This act was accompanied by Resolution 3-119, May 22, 1979, 25 D.C.Reg. 10883, recognizing the same emergency as its predecessor (E.A. 3-15, *supra*) and noting that a permanent bill had been reported out of committee.

8. *Second Emergency Offer to Purchase Act of 1979*, E.A. 3-54, approved June 12, 1979. [25 D.C.Reg. 10886]

This act was accompanied by Resolution 3-120, May 22, 1979. 25 D.C.Reg. 10889. This act and resolution are substantially identical to E. A. 3-16 and Resolution 3-42, *supra*.

9. *Fourth Emergency Multi-Family Rental Housing Purchase Act of 1979*, E.A. 3-90, approved August 27, 1979. [26 D.C.Reg. 986]

Accompanied by Resolution 3-179, July 31, 1979, 26 D.C.Reg. 989, this act was adopted after submission of the Multi-Family Housing Purchase Act of 1979, Act No. 3-62, to Congress on July 12, 1979. The Council stated in Resolution 3-179 that the permanent legislation would not become effective before the expiration of E.A. 3-53, *supra*, in September. This was the case because Congress adjourned for a district work period for most of the month of August. This emergency act was intended, therefore, to "fill the gap" between enactment of the permanent bill and expiration of the congressional review period.

10. *Latest Conforming Emergency Offer to Purchase Act of 1979*, E.A. 3-96, approved August 27, 1979. [26 D.C.Reg. 1022]

Accompanied by Resolution 3-205, 26 D.C.Reg. 1026, this act includes the provisions of the previously-enacted emergency bills on this subject, as well as a provision requiring an owner to allow no fewer than 60 days for settlement with a tenant purchaser after the effective date of the purchase contract. Resolution 3-205 noted that the Mayor was expected to sign the permanent Offer to Purchase Act on July 31, 1979, but that, like the Multi-Family Rental Housing Purchase Act, it would not clear congressional review before the expiration of E.A. 3-54, *supra*, in September.

GALLAGHER, *Associate Judge*, with whom KERN, NEBEKER and HARRIS, *Associate Judges*, join, concurring: I concur and wish to add a few comments to the court's holding that the District of Columbia Self-Government and Governmental Reorganization Act (Home Rule Act) D.C. Code 1979 Supp., § 1-146(a) forbids successive enactments of substantially identical temporary legislation directed at a single emergency. The statute provides that emergency acts "shall be effective for a period of *not to exceed ninety days*." [1] (Emphasis added.) That certainly

[1] In *SEC v. Sloan*, 436 U.S. 103 (1978), the Supreme Court reached the same conclusion in interpreting a statute with substantially similar language. There the Court held that the Securities and Exchange Commission could not order successive suspensions of trading under a statute permitting it "summarily to suspend trading in any security . . . *for a period, not exceeding ten days. . . .*" *Id.* at 111 (*quoting* 15 U.S.C. § 78 *l* (emphasis in original)).

64-864 O - 81 - 15

seems plain enough. The emergency acts are not effective beyond the ninety-day period. The provision of the Home Rule Act admits of only one reading in the context of the statutory and constitutional scheme.

Article I, Section 8 of the United States Constitution commands Congress

> To exercise exclusive Legislation in all Cases whatsoever, over such District . . . as may, by Cession of the particular States, and the Acceptance of Congress, become the Seat of the Government of the United States . . . .

In the Home Rule Act, Congress indicated at several points that there was no intention to cede this ultimate authority to the District of Columbia, expressly reserving the right to legislate for the District at any time, including the amendment or repeal of acts passed by the Council, D.C. Code 1978 Supp., § 1-126,[2] subject only to the

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[2] The complete text of this section provides:

> Notwithstanding any other provision of this Act the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this Act and any act passed by the Council. [D.C. Code 1978 Supp., § 1-126.]

Similarly, the purpose section of the statute provides in part:

> *Subject to the retention by Congress of the ultimate legislative authority over the Nation's Capital granted by article I, section 8, of the Constitution,* the intent of Congress is to delegate certain legislative powers to the government of the District of Columbia; authorize the elec-

safety valve granted to deal with emergencies on a temporary basis. To safeguard this power, Congress provided that most permanent acts of the District Council must be transmitted to Congress for a 30-day review period, § 1-147(c)(1). Congress spelled out detailed procedures for concurrent resolutions of disapproval by both Houses during the review period. § 1-127.[3] Its careful attention to the preservation of its oversight role reflects both its responsiveness to the Constitutional mandate and its legitimate interest in the unique national and international considerations in the government of the federal city. Adoption of the position urged by the District would lead to two results which Congress clearly could not have intended.

First, repeated enactments of numerous "emergency" measures would effectively result in permanent legislation in force in the District of Columbia which had never been subjected to Congressional review, a result directly in contravention of the requirements of the Home Rule Act (§ 1-147(c)(1)). The District's argument that Congress' retention of legislative power permits it to step

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tion of certain local officials by the registered qualified electors in the District of Columbia; grant to the inhabitants of the District of Columbia powers of local self-government; to modernize, reorganize, and otherwise improve the governmental structure of the District of Columbia; and, to the greatest extent possible, *consistent with the constitutional mandate,* relieve Congress of the burden of legislating upon essentially local District matters. [D.C. Code 1978 Supp., § 1-121(a) (emphasis added).]

[3] If, as a result of several years' experience, the conclusion has been reached by the Council that the statutory ninety (90) day emergency period is not long enough to conclude that particular legislative process, this is essentially a problem for presentation to Congress and not the court.

in at any time and amend or repeal an emergency act ignores the fact that in the Home Rule Act, Congress expressly has chosen to exercise its oversight authority over permanent legislation through the 30-day layover provision. To conclude that emergency legislation may be indefinitely used successively would be to permit the Council to avoid the constitutionally required supervision of Congress if by a two-thirds vote of the Council. This is in fundamental conflict with the Home Rule Act and the Constitution.[4]

A second unwarranted consequence of the District's position is that, as a practical matter, a substantial body of laws in force in the District might be effectively insulated from both Congressional and judicial scrutiny. Taken altogether, the District's position results in the proposition that the Council can pass successive emergency acts *ad infinitum*, constrained only by the necessity of obtaining a two-thirds vote every 90 days and the possibility that Congress might step in sua sponte and overrule the emergency legislation. Furthermore, says the District, the Council's finding of an emergency would not be subject to court review.[5]

I agree with our dissenting colleagues that in deciding this case the court should first examine the construction which the Council has placed on the Act of Congress we are interpreting.[6] In doing so, however, we should not take a narrow approach, ignoring the vast amount of

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[4] Article 1, Section 8 of the Constitution, *supra*.

[5] I doubt the merit of this contention if, for example, the finding on its face reveals the absence of genuine emergency circumstances.

[6] I do not agree, however with the second step, *viz.*, the deference doctrine, which the dissent espouses.

documentary history before us of the Council's utilization of the Emergency Legislation.[7] After all, in deciding a case of this nature we "need not be blind to what all others know." *Cullinane v. Geisha House, Inc.*, D.C. App., 354 A.2d 515, 518 n.12 (1976).[7a] It is only fair to the Council that the broad spectrum of its actions on emergency legislation available to us in this record be examined lest we obtain a false picture from a restricted inspection.

In this court, in this case, the parties have stipulated to 84 instances of the *successive* use of emergency powers. A perusal of the stipulation filed with this court relating to these 84 instances shows the Council has been utilizing emergency legislation to deal with such dubious social emergencies as: regulations relating to ice cream vendors, public alley closings, rental vehicle tax, merit personnel legislation, senior citizen residences sales tax on meals exemptions, and household and dependent care services deduction. In some instances, there have been emergencies declared on the same problem every three months for a period of two and three years.

In a characteristically learned opinion, then Corporation Counsel John R. Risher, Jr. stated not long ago that "while prior to consideration of a proposed act as an emergency measure, the Council as a matter of practice adopts a resolution containing findings purporting to establish the necessary emergency circumstances, *often these findings on their face reveal the absence of 'emergency circumstances,' and that the proposed act*[s] *are not the proper subjects for enactment as emergency*

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[7] See Stipulation, filed November 21, 1979, by counsel for all parties.

[7a] *Cert. denied,* 428 U.S. 923 (1976), *quoting Burr v. N.L.R.B.*, 321 F.2d 612, 624 (5th Cir. 1963).

measures." Opinion of the Corporation Counsel, The Emergency Legislation Authority of the Council, 1 Op. C.C.D.C. 457, 9 (1977) (emphasis added).

Corporation Counsel Risher had this to say on the subject of repeated enactment of emergency legislation on the same problem

> I submit that . . . enacting a fourth bill on basically the same problem on an emergency basis tends to circumvent the intent and purpose of the authority delegated in section 412(a)[8] provisions. As I view section 412(a), it was designed to give the Council power to meet certain crises head on, and thus avoid the lengthier process involved in permanent legislation which cannot become effective until it is first presented to Congress and a period of thirty legislative days have expired. However, section 412(a) *is in this instance being used to continue the effectiveness of "permanent" legislation on an "emergency" basis, a device which strikes me as an obvious circumvention of the Charter.* For these reasons, and the further reason that I do not believe that the Mayor as the Chief Executive should become a party to such procedures, it is my recommendation that the act not be approved. [*Opinion of the Corporation Counsel, Emergency Cooperative Regulation Act of 1976*, 1 Op. C.C.D.C. 424, 2 (1978) (emphasis added).]

In a subsequent opinion, then Acting Corporation Counsel Louis P. Robbins felt obliged to return to the same theme. In commenting on housing legislation then being proposed, he said

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[8] D.C. Code 1979 Supp., § 1-146(a).

> The second factor is the substantial likelihood that EA 2-133 will be extended by another emergency act if Bill 2-333 is sent to Congress for the 30-day layover period. In that event, we would be called upon to remind you that *this Office considers successive emergency acts to be presumptively invalid.* See Mr. McCally's Memorandum to you dated April 27, 1978. This presumption will attain greater force if the Council again declines to carefully establish a factual basis for such an emergency declaration. [*Opinion of the Corporation Counsel, First Emergency Housing Discontinuance Regulation Act of 1978*, 3 Op. C.C.D.C. 258 (July 27, 1978) (emphasis added).]

It was doubtless utilization such as this of the emergency acts that led former Corporation Counsel Risher to make the prescient observation that

> the *continued abuse of the emergency legislation authority will inevitably lead to judicial invalidation* and, perhaps, a precedent which restricts the District's emergency legislation authority. [*Opinion of the Corporation Counsel, The Emergency Legislation Authority of the Council*, 1 Op. C.C.D.C. 457, 9 (1977) (emphasis added).]

It is evident that to construe the Home Rule Act as permitting indefinite successive utilization of emergency legislation on the same problem would enable the Council to avoid the Congressional supervision which is crucial to the statutory scheme. It would be, effectively, a basic amendment of the Home Rule Act.

Another reason I am motivated to write, however, is to state my disagreement with views in the dissenting opinion on the scope of our review in this case, which I hope do not later obtain currency. I might say pre-

liminarily that in several previous cases, we have exercised our jurisdiction to decide whether the Council exceeded its authority by passing legislation which arguably violated the specific limitations contained in the Home Rule Act. D.C. Code 1978 Supp., § 1-147(a). *E.g.*, *Bishop v. District of Columbia*, D.C.App., 411 A.2d 997 (1980) (en banc) (tax on unincorporated professionals prohibited); *Capitol Hill Restoration Society, Inc. v. Moore*, D.C.App., 410 A.2d 184 (1979) (Council's grant of appellate court jurisdiction in certain non-contested cases impermissibly altered court's jurisdiction); *McIntosh v. Washington*, D.C.App., 395 A.2d 744 (1978) (Firearms Control Regulations Act).

The dissent says that principles of separation of powers and of statutory construction require deference to the Council's interpretation of its power under the Home Rule Act. Specifically, it draws an analogy to a state court (this court) reviewing the validity of a state legislature's (the Council's) action (the emergency legislation) under the state constitution (the Home Rule Act). This analogy is of questionable usefulness and in any event is misapplied. In most of the cases cited by the dissent, the courts rejected a particular reading or application of the legislature's action to save it under the constitution. *See e.g.*, *United States v. Vuitch*, 402 U.S. 62 (1971); *Flemming v. Nestor*, 363 U.S. 603 (1960); *Anniston Manufacturing Co. v. Davis*, 301 U.S. 337 (1937). In these cases, the principle of presumptive validity of a legislative action is applied when it is the action itself which is declared to be ambiguous and given a constitutionally saving construction. That is not the case here. In this case, it is the Home Rule Act—the "constitutional" analog—which is found by the dissent to be ambiguous. It attempts to apply the analogy in reverse, *i.e.*, to construe the "constitution" (the Home Rule

Act) to save the legislature's action. Deference to the legislative body is not appropriate, however, when the issue is interpretation of the "constitution."

Our dissenting colleagues draw attention to the statement in *United States v. Nixon*, 418 U.S. 683 (1974), that the interpretation of its powers by any branch is to be given great respect (*id.* at 703). It would have been instructive to continue on with that passage of the Supreme Court's opinion:

> Many decisions of this Court, however, have unequivocally reaffirmed the holding of *Marbury v. Madison*, 1 Cranch 137 [2 L.Ed.60] (1803), that "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Id.* at 177 [2 L.Ed.60].
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> Our system of government "requires that federal courts on occasion interpret the Constitution in a manner at variance with the construction given the document by another branch." *Powell v. McCormack, supra* at 549 [23 L.Ed. 2d 491]. And in *Baker v. Carr*, 369 U.S. at 211 [7 L.Ed.2d 663], the Court stated:
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> > "*Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution.*"

> Notwithstanding the deference each branch must accord the others, the "judicial Power of the United States" vested in the federal courts by Art III, § 1, of the Constitution can no more be shared with the Executive Branch than the Chief Executive, for example, can share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a Presidential veto. Any other conclusion would be contrary to the basic concept of separation of powers and the checks and balances that flow from the scheme of a tripartite government. The Federalist, No. 47, p. 313 (S. Mittell ed. 1938). We therefore reaffirm that it is the province and duty of this Court "to say what the law is" with respect to the claim of privilege presented in this case. *Marbury v. Madison, supra,* at 177 [2 L.Ed.60]. [*United States v. Nixon, supra* at 703-05 (emphasis added).]

It seems to me the fundamental difference between the majority and dissenting view in this case is there discussed. The dissenting opinion here is preoccupied with a doctrine of deference; and the majority view is concerned principally with the proposition that, in the final analysis, it is "the province and duty of this Court 'to say what the law is . . . ,'" the historical doctrine of *Marbury v. Madison.*[9]

Deference to the legislature is appropriate when a legislative action is capable of two readings, one of which would invalidate it and one of which would uphold it. *See Flemming v. Nestor, supra* at 617. But when the meaning of a statute is questioned it is the duty of the

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[9] 1 Cranch 137, 2 L.Ed. 60 (1803).

courts, not the legislature, to resolve the issue. In the past, this court did not display any particular reluctance in declaring an Act of Congress unconstitutional. To illustrate, in *Estate of French*, D.C.App., 365 A.2d 621 (1976),[10] this court declared unconstitutional an Act of Congress popularly known as the Mortmain statute, on the ground that it created an unreasonable classification and had no rational legislative purpose (*id.* at 624-25). I call that a rather strong holding. I see no reason why the court should now be reticent in dealing with actions of the City Council.

If we were to derogate the traditional role of the court in the early stages of this new government, it would bode ill for the expectation of a confident, able, independent judiciary in this jurisdiction. One hardly needs to labor the importance of an independent judicial branch. Without independence, the judiciary would be merely an appendage of the other two branches. There most certainly should be no meddlesome interference with the other branches of government, but when it comes to interpreting acts of Congress this court should carefully weigh but not defer to the viewpoint of the executive or legislative branches. Not only is the judiciary best equipped to perform the function, but this is perhaps the court's most important responsibility. In the long run, the steady manifestation of the highest traditions of the judiciary will turn out to be profoundly in the best interest of the government, and hence the community.

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[10] *Appeal dismissed and cert. denied*, 434 U.S. 59 (1977).

MACK, *Associate Judge*, dissenting, with whom NEWMAN, *Chief Judge* and PRYOR, *Associate Judge*, join: The language of the Home Rule Act relating to the issue of successive emergency enactments is ambiguous. The legislative history is both meager and inconclusive. Nevertheless, based on this paucity of congressional direction, the majority has construed the Act as a very restrictive grant of legislative power. I submit such a narrow interpretation should only be made when the legislative history *compels* the conclusion that this was the explicit intent of Congress.

We are concerned here with the statutory construction of a small but vitally important segment of the legislative authority of the District of Columbia Council. There is complete agreement by the parties that a genuine emergency existed necessitating the emergency legislation at issue. We are *not* therefore faced with a charge of abuse of power. We are asked simply to define the limits of power. Specifically, we are asked to interpret whether the phrase "such act shall be effective for a period of not to exceed ninety days" means only one substantive legislative response per emergency or rather is a temporal limitation on each exercise of legislative power without regard to the substantive terms.

Ordinarily, use of the word "act" in the context of legislation means the exercise of power rather than the content of the legislation. Witness the fact that many statutes of Congress are referenced as Acts—for instance, the "Act of October 15, 1972." And the language of the statute at issue here simply does not restrict the Council from "acting" where there is a finding of emergency circumstances by two-thirds vote. Accordingly, at the very least one must conclude that the statute is not sufficiently clear to warrant a definitive interpretation without turning to the legislative history. There too,

we find only brief and inconclusive mention of the issue of successive emergency enactment from which, I submit, no clear statement of congressional intent is discernible. I am convinced that, under basic principles of statutory construction, the Council's legislation can, and should, be upheld. Moreover, in view of the context in which this case arises, I believe we are compelled to rule for the District of Columbia when we apply not only rules of statutory construction, but also principles and presumptions attendant to state constitutional interpretations of the gravest nature.

I.

There is a fundamental canon of statutory construction which mandates that if a statute is fairly susceptible of two constructions, one which will give it effect, the other which would defeat it, the former is preferred. *Anniston Manufacturing Co. v. Davis*, 301 U.S. 337, 351 (1937). Coupled with this canon is the strong presumption in favor of the validity of actions by the legislature (in this case the District Council). *Flemming v. Nestor*, 363 U.S. 603, 617 (1960); *Cobb v. Bynum*, D.C.App., 387 A.2d 1095, 1097 (1978). This presumption attaches not because the Council has so interpreted its authority, but because it is a legislative body, a coordinate branch whose actions are entitled to great respect.

The purpose of these time-honored principles is to avoid the situation the majority may have wrought here. The determination of legislative intent from a cold record is a difficult, imprecise task. If a court errs in invalidating a legislative act, the error cannot be corrected. The legislature can pass a new statute, but the court's decision is final as to impact and scope. It is a troubling thought that we, in interpreting an ambiguous statute, may have forever foreclosed operation of a valid act. This is a high price to pay for guessing wrong.

And the statute is ambiguous. The language of the Home Rule Act authorizing 90-day legislation by a two-thirds vote of Council members if "emergency circumstances make it necessary" is susceptible to two interpretations. Looking to the interpretation which would give validity to what the Council has done, the language of the Act can be read as a procedural requirement of a two-thirds vote for *each* exercise of power throughout an emergency (as opposed to one exercise). Similarly, the meager legislative history relevant to this section can be read to support this construction.[1] Thus Representative Rees' comments expressing a concern over "hanky-panky" abuse can fairly be construed as indicating that the procedural safeguard of a two-thirds vote was the solution to this potential abuse, rather than a prohibition against dealing with an emergency more than one time.[2]

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[1] We should be most reluctant to draw the restrictive conclusions of the majority from this legislative history. Only two pages out of the almost 4,000 comprising the *Home Rule History* are devoted to a discussion of successive enactments. Congress simply did not focus its attention on this issue sufficiently to provide us with any reliable guidance.

[2] The legislative history of the 1978 Amendments to the Home Rule Act also supports this conclusion. In revising the description of the period for congressional review of permanent legislation, note was made of the fact that under the Act as then written, the District was forced "to enact an inordinate amount of temporary (90-day) 'emergency legislation' that requires no congressional review." H.R. REP. No. 95-1104, 95th Cong., 2d Sess. at 2 (1978). At the same time that Congress amended this legislative layover section (D.C. Code § 1-147(c)(1)), it also amended § 1-146(a)—the provision at issue here—without making any change in the emergency procedures. When it is shown that an interpretation has been brought to the attention of Congress and not

Given the ambiguity in both the statute and its history, the direction which this court should take is clear. Having found nothing in the statutory language or its history to *mandate* otherwise, and I submit there is nothing there, we should choose the construction that would give effect to the Council's actions. *See United States v. Vuitch*, 402 U.S. 62, 70 (1971). Instead, the majority has devised an alternative "solution" (for itself, I might say, as well as the Council). It has concluded that we can all avoid the problem of the "second time around" by requiring the Council to enact emergency legislation using permanent legislative procedures. I suggest that the majority, itself, has engaged in legislating and is treading on dangerous ground.

The proposed "solution" is not a solution at all. It begs the issue.[3] It requires the Council, faced with a crisis, to apply a cumbersome procedure, antithetical to the very nature of emergency responses, which Congress could not have intended. It obliterates the difference between "temporary" and "permanent" since the Council, faced with the impossible duty of forecasting the length of an emergency, will be encouraged to use the permanent track in all cases. Moreover it places on the District of Columbia Council the burden (which we might heartily applaud but which no other legislative body has had to accept)—the mandate, irrevocable, of being absolutely right, the first time, in proposing a solution.

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changed by it, it is almost conclusive that the interpretation has congressional approval. *Kay v. FCC*, 143 U.S.App.D.C. 223, 231-32, 443 F.2d 638, 646-47 (1970).

[3] Contrary to the majority's implicit view, the conclusion that successive emergency enactments are proper under the Home Rule Act does not detract from or negate the need for a permanent legislative process. Both are separate and distinct mechanisms.

In arguing the feasibility of its approach, the majority relies on the Council's regulations, which, of course, were not in effect when the Home Rule Act was passed. It relies, erroneously, on speculative comments by Representative Rees that the "permanent procedures" *could* be followed if an emergency exceeds 90 days. The fact is that the "permanent procedures" Representative Rees referred to did not include the 30 legislative-day layover for congressional review. The layover provision was added subsequent to the time of the comments by the Congressman. There is no suggestion anywhere in the legislative history that the permanent procedure in the Act as finally passed would be adequate to accommodate continuing emergencies. Absent such a clear statement, we should be very hesitant to impose this construction. The truth of the matter is—and the majority's disposition confirms this—that we simply do not know whether the Council, even under ideal circumstances,[4] could operate effectively by placing emergency matters on a permanent procedural track.[5]

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[4] The majority opinion calculates that under ideal circumstances, these permanent "temporary" acts would become law within 71 days. That leaves only an additional 19 days for the less-than ideal snags inherent in any legislative process before the original 90-day emergency act expires. I do not share the majority's view that this tight schedule is a feasible alternative.

[5] Most troublesome of all, the majority's conclusion relies heavily on the provisions in the permanent track for full public review and participation before an enactment becomes final. Yet, later in the opinion the majority suggests that these very procedures for public participation be abbreviated so as to pass emergency measures within 90 days. In an effort to fit the square peg of emergency acts into the round hole of permanent legislation, the majority suggests that the procedures for permanent legislation be altered.

I submit this difficulty could be easily avoided. When a court reaches an impasse in statutory interpretation, it should turn to certain concepts of long standing for guidance. Some of these judicial guidelines are repeated so often as to appear to be "generalities." Yet, I cannot think of a set of circumstances that demonstrates more graphically the importance of a court's adherence to such generalities than the present circumstances. Nor can I think of circumstances demonstrating more graphically the folly of devising innovative legislative solutions. The issue here—lost sight of by the majority—is whether the Home Rule Act, *as passed by Congress*, allows successive emergency enactment. The answer is simple under judicial guidelines—given the circumstances here of ambiguous statutory language, not definitively resolved by the legislative history, we give effect to the challenged enactment. The majority, in refusing to meet the issue head-on, has read something into the Home Rule Act that is not there,[6] contrary to principles of statutory construction. *See FTC v. Simplicity Pattern Co., Inc.*, 360 U.S. 55, 67 (1959). It has done so without according due weight to the Council's interpretation of its authority to act under the Act—again contrary to principles of statutory construction. *Cf. Udall v. Tallman*, 380 U.S. 1, 16 (1965); *Lange v. United States*, 143 U.S.App.D.C. 305. 309, 443 F.2d 720, 724 (1971).

It has acted with only a dim perception of yet another venerable judicial principle: a court must not interpret a statutory provision so as to bring about undesirable or unjust consequences. *United States v. American Trucking Associations, Inc.*, 310 U.S. 534, 543 (1940); *Quinn v. Butz*, 166 U.S.App.D.C. 363, 373, 510 F.2d 743, 753

[6] The majority, in essence, has added a sentence to the statute: "If the emergency lasts longer than 90 days, the procedures for permanent legislation are to be followed."

64-864 O - 81 - 16

(1975). The potential impact of the majority's decision today is widespread and the repercussions unknown.[7] The plaintiffs did not challenge the substantive validity of the Council's legislation. There is no issue here that a genuine, on-going emergency existed. Yet, the majority has accepted the rationale that because such abuses *might* occur, an issue not factually before the court, Congress could only have intended to mean that *any* successive act was unlawful. These are separate issues. If the validity of the emergency declaration were challenged here, we might be faced with the question of abuse. We should resist the temptation to hastily respond to perceived abuses in other Council actions (*see, e.g.*, Judge Gallagher's statement *ante* at p. 37) by reading into the Act an absolute prohibition regardless of the merits of the emergency. As a result of this conclusion, the decision will create an untold number of truly aggrieved individuals who have been transacting the business of their lives under now-invalid Council acts. The court's mandate today gives the Council only 90 days to respond to this concern. Predictably at least one response will entail rushed passage of permanent "temporary" measures, using the court's "solution," to buy more time. The court's decision will have created yet another emergency, forcing the Council to put aside its regular pressing business. These adverse consequences argue strongly for a construction that will uphold the Council's actions. *United States v. Powers*, 307 U.S. 214, 217 (1939).

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[7] For example, during the pendency of this appeal, the Federal National Mortgage Association cut off any further funding in the District because an increase in the interest ceiling on home mortgages had been enacted by emergency legislation. Although the parties here have identified emergency legislation in effect at the time the case was argued, we do not have before us any indication of more recent actions taken by the Council.

In any task of statutory construction, particularly one as important as is presented here, we must do more than examine the legislative history of the narrow section at issue. *Kokoszka v. Belford*, 417 U.S. 642, 650 (1974). Acts of Congress must be interpreted in light of the spirit in which they were written and the reasons for enactment. *General Service Employees Union v. NLRB*, 188 U.S.App.D.C. 119, 124, 578 F.2d 361, 366 (1978). This court has a duty to favor that interpretation of the Home Rule Act that will make its purpose effective, and avoid one which would make its purpose more difficult to fulfill. *See United States v. General Motors Corp.*, 171 U.S. App.D.C. 27, 45, 518 F.2d 420, 438 (1975). We should construe ambiguous provisions with reference to the manifest purpose of the Act. *Zeigler Coal Co. v. Kleppe*, 175 U.S.App.D.C. 371, 381-82, 536 F.2d 398, 408-09 (1976).

The "core and primary purpose of the Home Rule Act" [8] is to "grant to the inhabitants of the District of Columbia powers of local self-government; . . . and, *to the greatest extent possible* consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters." D.C. Code 1978 Supp., § 1-121(a) (emphasis supplied). I would take Congress at its word.[9]

II.

I am troubled by a more basic problem with the majority decision. I think the court has been presented with

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[8] *McIntosh v. Washington*, D.C.App., 395 A.2d 744, 753 (1978) *quoting* D.C. Code 1978 Supp., § 1-121(a).

[9] *See, e.g., Kennedy v. City of Newark*, 29 N.J. 178, ——, 148 A.2d 473, 477-78 (1959), where the New Jersey Supreme Court liberally construed powers given municipalities under a home rule act, favoring local action.

something more than a task of statutory construction. We have been asked to interpret the enactment from which the District derives its governmental existence. I view the problem therefore as one analogous to constitutional interpretation. The District of Columbia Charter forms the basis for all governmental authority in the District. It establishes a three branch system of government with co-equal coordinate departments. The legislative power is "vested in and shall be exercised by the Council" (D.C. Code 1978 Supp., § 1-144(a)), the executive power in the Mayor (D.C. Code 1978 Supp., § 1-162), and the judicial power in the District of Columbia Court of Appeals and Superior Court (D.C. Code 1978 Supp., § 11-431, Appendix). Although some restrictions have been placed over the subject matter on which the Council may legislate, *see, e.g., Capitol Hill Restoration Society, Inc. v. Moore*, D.C.App., 410 A.2d 184 (1979), the *powers* conferred are not limited in their scope. D.C. Code 1978 Supp., § 1-124.

The legislative history of Home Rule manifests a congressional intent to delegate to the District powers as broad as its own. The House Committee Report, in explaining the Act's general delegation of legislative powers, noted:

> Congress, in legislating for the District, has all the powers of a state legislature, and Congress may delegate to the District government that "full legislative power, subject of course to constitutional limitations to which all lawmaking is subservient and subject also to the power of Congress at any time to revise, alter, or revoke the authority granted."

Firemen's Insurance Co. of Washington, D.C. v. Washington, 157 U.S.App.D.C. 320, 324, 483 F.2d 1323, 1327

(1973) *citing District of Columbia v. Thompson Co.*, 346 U.S. 100, 109 (1953); quoted with approval in STAFF OF THE HOUSE COMMITTEE ON THE DISTRICT OF COLUMBIA, 93D CONG., 2D SESS., HOME RULE FOR THE DISTRICT OF COLUMBIA 1973-1974 at 1448 (Comm. Print 1974). We may accordingly view the Charter as a broad and undefined grant of authority to the Council, similar to the power of a state, and subject only to the specific limitations enumerated in the Act. [D.C. Code 1978 Supp., § 1-126 (Congressional reservation of authority), *id.*, -127 (Congressional action on certain District matters), 1979 Supp., § 1-147 (Limitations regarding specific subject matter), and 1978 Supp., § 47-228 (Budget process—Limitations on borrowing and spending).]

But whether we characterize the District of Columbia as a municipal corporation, a state government, or something uniquely in between, its lawmaking body is entitled to certain presumptions in reviewing its action. The foremost of these is that every lawmaking body is entitled to a presumption in favor of the constitutionality of its actions. *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802, 809 (1969); *Flemming v. Nestor*, *supra*; *Monarski v. Alexandrides*, 362 N.Y.S. 976, 982 (1974). This principle is based on a view of separation of powers which operates to prevent one branch from encroaching on the powers of another. *Union Pacific Railroad Co. v. United States*, 99 U.S. 700, 718 (1879). As a corollary, it is never presumed that a legislative body exceeded its authority or intended to violate the constitution. *Anniston Manufacturing Co. v. Davis*, *supra* at 351-52. Lastly, a general presumption of good faith is attributed to all lawmaking bodies. I think all these presumptions should operate here as we interpret the bounds of the authority within which the Council can function under the Charter.

[1028]

Placed in this framework, other principles of analysis come into focus in the instant case. Courts should adhere to the principles of judicial restraint when called upon to review the validity of the authority under which a coordinate branch of government acts. Any restriction on broad authority should be read narrowly and no limitations not expressly imposed by Congress should be inferred. The interpretation of its powers by any branch is to be given great respect. *United States v. Nixon*, 418 U.S. 683, 703 (1974). Adherence to these principles is not an abdication of judicial responsibility, but rather a prudent exercise of such authority.

In light of the dictates of these principles, I would view our task as completed once we were assured that the acts in question had met the Charter's technical requirements: that two-thirds of the Council members had voted in its favor, that it was signed by the Mayor, and that it was substantively valid. The Home Rule Act on its face does not impose any additional limitation. I would not search further for a basis to invalidate the Council's actions.

I would take this approach because of the "checks" found in the overall legislative process that are a safeguard against potential abuse. The existence of these "checks" provides a persuasive basis from which to conclude that this limited judicial review of another branch's authority was also Congress' intent. Each act by the Council requires an absolute two-thirds majority vote, an extraordinary requirement, higher even than the vote required to overturn a mayoral veto. Each act expires automatically after 90 days, requiring that the entire enactment process be reexecuted, including a new two-thirds vote. Each act is subject to judicial review for substantive validity. By its terms, the Charter contains

an additional "check" on the possibility of legislative abuse by making emergency enactments subject to mayoral veto. Should there be any remaining doubt, the Act reserves for Congress the power to take any action respecting the District. D.C. Code 1978 Supp., § 1-126. Thus persons aggrieved by successive Council enactments have numerous options to redress their concerns through the political branches of both the District and federal governments. Beyond assuring the substantive validity of an act, there is no need, and indeed I think it unwise, for us to offer yet another forum *unless clearly required.*

I think one of the consequences of unnecessarily holding that many of the Council's acts are *ultra vires* is to undermine the effectiveness of the Council. Until Congress provides us with a clear direction that it intended to limit the Council's powers in the manner adopted by the majority, I think we should carefully exercise our authority to encourage the development of the responsible and independent government envisioned by the Charter, accountable most directly to the residents of the District.

[Subsequently, the following letter was received for the record.]

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
OFFICE OF THE CORPORATION COUNSEL,
Washington, D.C., July 1, 1980.

Hon. WALTER E. FAUNTROY,
Chairman, Subcommittee on Government Affairs and Budget, Committee on the District of Columbia, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to the request of minority counsel at the subcommittee hearing on June 11, 1980, for particular information concerning the emergency powers of the Mayor. There is no general or residual power vested in the Mayor of the District of Columbia to impose restrictions or duties upon individuals or businesses in the District in response to emergency circumstances. However, several statutes and regulations give the Mayor limited powers to respond to specific emergencies posing a substantial threat to the safety of the community.

A number of laws give the Mayor the authority to respond to civil disorders or public disasters. Article 48 of the Police Regulations of the District of Columbia, enacted by D.C. Council Regulation 68–12, authorizes the Mayor to issue emergency regulations whenever he,

> . . . determines that a civil disorder or other public disaster, or an imminent danger thereof, exists within the District, and that such disorder or disaster substantially endangers, threatens or interferes with the health, safety or wellbeing of persons, the secure possession and use of property, the free exercise or rights, or the orderly functioning of government agencies located within the District . . .

Id., sec. 1. Such regulations may provide for a general curfew; a prohibition on the sale of alcoholic beverages, gasoline, and weapons; and a prohibition on the carrying of any weapons, ammunition, or incendiary devices in public. *Id.*, sec. 2. The regulations may take effect immediately, but must be published as soon as possible. *Id.*, sec. 3. The violation thereof is punishable by a fine of $300 or imprisonment of 10 days. *Id.*, sec. 4. Within 48 hours after declaring such an emergency, the Mayor must appear before the Council to explain why he exercised this emergency power, and the state of emergency may not extend beyond this meeting unless extended by the Council. *Id.*, sec. 5.

Several other statutes complement the Mayor's emergency powers under article 48 of the Police Regulations to respond to a civil disorder or public disaster. Under the District of Columbia Code, section 4–133 (1973), in the event of "any emergency of riot, pestilence, invasion, [or] insurrection," the Mayor is empowered to appoint citizens as special police officers without pay. Similarly, in the event of a riot, the Mayor may call upon the President to send in the National Guard to assist in the enforcement of the laws. District of Columbia Code, section 39–603 (1973). Also, in the event of exigencies, requiring additional firefighters, the Mayor may order the members of the Fire Department to work additional hours. District of Columbia Code, section 4–404a (1973).

In addition, two statutes give the Mayor powers to respond to emergencies caused by severe air pollution or energy shortages. The

Air Pollution Control Act, District of Columbia Code, section 6–811 *et seq.* (1973), authorizes the Mayor to respond to an air pollution emergency pursuant to regulations issued by the Council. District of Columbia Code, section 6–813 (1973). These regulations, Regulation No. 72–12, authorizes the Mayor to shorten the hours or curtail operations of sources of pollution, including power plants operated by PEPCO and GSA, to restrict vehicular traffic, to impound sources of air pollution, and to enter any premises necessary to reduce or terminate air pollution. *Id.*, section 8–2:719.

The Energy Resources Shortages Act, District of Columbia Code, Section 6–2801 *et. seq.* (supp. VII, 1980), likewise, authorizes the Mayor to take steps necessary to respond to an emergency caused by a severe energy shortage. He may order businesses to reduce their hours of operation, to adjust their temperature requirements, or may order any person, group, or class of persons to modify the type and quality of fuel oil used. District of Columbia Code, Section 6–2301(b) (d) (supp. VII, 1980). The duration of the Mayor's authority to respond to an energy shortage, however, is limited to 15 days, unless extended by an emergency act of the Council. District of Columbia Code, Section 6–2301(e).

In addition, a bill pending before the Council, bill 3–198, the District of Columbia Disaster Act of 1979, would authorize the Mayor to take temporary actions in response to a public disaster, emergency, or catastrophe. Under this bill, the Mayor would be authorized to issue emergency executive orders, which could require evacuation, destruction of contaminated property or the imposition of a curfew. Such orders, however, would only be effective for a maximum period of 15 days, and would have to be extended by an emergency act of the Council.

The Mayor's authority under these statutes and regulations is far more limited than the Council's authority to respond legislatively to an emergency. Generally, his authority may only be utilized to respond to circumstances that pose an immediate threat to the physical safety of the community. Therefore, such laws as grant the Mayor emergency powers are an inadequate substitute for the power of the Council to enact laws, which become effective immediately and can provide a more comprehensive and flexible approach to emergency circumstances threatening the community.

If I can be of further assistance, please let me know.

Sincerely yours,

JUDITH W. ROGERS,
Corporation Counsel, District of Columbia.

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